156

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Volume I

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

October Term, 1947

No. 36

FEDERAL TRADE COMMISSION, PETITIONER

vs.

THE CREST [illegible]

No. 37

FEDERAL TRADE COMMISSION, PETITIONER

vs.

AETNA [illegible] COMPANY

No. 38

FEDERAL TRADE COMMISSION, PETITIONER

vs.

MARQUETTE [illegible] MANUFACTURING COMPANY

No. 39

FEDERAL TRADE COMMISSION, PETITIONER

vs.

CALAVERAS [illegible]

No. 40

FEDERAL TRADE COMMISSION, PETITIONER

vs.

HURON [illegible] COMPANY

No. 41

FEDERAL TRADE COMMISSION, PETITIONER

vs.

SUPERIOR [illegible]

ON WRITS OF [illegible]

PETITION FOR CERTIORARI FILED [illegible], 1947.

CERTIORARI GRANTED MARCH 15, 1948.

INDEX TO VOLUME 5.

Pages 2763 to 3542.

TRANSCRIPT OF TESTIMONY.

PAGE

Colloquy 2889, 2921, 2928, 3143

Index to Clark and Burns data containing replies to questionnaires (24-C) showing variations from maximum mill prices (.01 cent to more than 70 cents per barrel) 2966

Exhibits received in evidence 3214

WITNESSES FOR COMMISSION (*Continued*).

Testimony of:

Ackerman, J. H. 2778, 2820, 2852, 3113

Beckett, Garner A. 3402, 3486

Brister, C. J. 2839

Callaghan, John P. 2932

Cameron, William P. 3228

Casto, George D. 3439, 3466

Cleps, W. D. 2914

Dain, Frank M. 3025, 3050

Duffy, John 2802

Duffy, Stephen V. 3010

Duque, E. E. 3531

Gay, George L. 3255

George, W. H. 3327

Gottschalk, Jacob 2792, 2811

Gubernator, E. S. 2763, 2771

Harte, Thomas J. 2889, 2895, 3061, 3131

Hollister, C. T. W. 3243
Holmes, T. K. 3309
Keller, James A. 3469, 3498
Knappenberger, H. L. 3208, 3220
Leonard, Warren H. 3433, 3441
MacIntyre, Everette 3106
Merrill, C. C. 3333
Miller, Walter T. 2862
Milwee, R. F., Jr. 3142, 3147, 3164
Nicklin, D. P. 3523
Partridge, T. K. 3362
Paulson, Lynn C. 2918
Phillips, H. G. 3165
Royal, I. D. 3157
Ryan, Joseph J. 2954, 2972, 3047
Scott, Ella 3511
Shelby, Arthur B. 3289
Tongue, Gordon 3168
Twamley, James F. 2768
Vance, Robert Lee 3539
White, Hugh E. 2919, 2927
Wing, Walter S. 3071
Wray, John W. 2985

(Testimony of Witnesses contained in pages 7052 to 9346 of the Original Transcript.)

7052 New York City, N. Y.
Wednesday, May 25th, 1938.

7053 (COM. EXS. 1138-A, 1138-N, 1138-O and 1138-Q
7054 were offered and received in evidence.)
7062 (COM. EXS. 971-6-X, 971-23-T, 971-23-W, 971-24-R, 971-25-U, 971-25-V, 971-25-W, 971-25-X, 971-25-Y, 971-26-A, 971-26-B, 971-26-C, 971-26-D, 971-26-E, 971-26-F, 971-26-H to 971-26-L, inclusive, 971-27-A, 971-27-B, 971-27-C, 971-28-Y, 971-29-A, 971-29-B, 971-4-C, 971-4-O, 971-4-V, 971-4-W, 971-4-X, 971-5-A, and 971-5-C were offered and received in evidence.)

(COM. EX. 958-5-O was offered and received in evidence.)

(COM. EXS. 913-2-A, 913-2-N were offered and received in evidence.)

(COM. EXS. 562-3-R, 562-3-Q, 562-3-S, 562-3-T,
7063 562-3-U, 562-3-V were offered and received in evidence.)

(COM. EXS. 883-Y, 883-Z, 883-2-A, 883-2-B, 883-2-C, 883-2-D, 883-2-E, 883-1-B, 883-1-Q, 883-1-R, 883-1-J, 883-1-K, 883-1-S, 883-1-T, 883-1-L, 883-1-M, 883-1-N, 883-1-O were offered and received in evidence.)

(COM. EXS. 751-B and 751-C were offered and received in evidence.)

(COM. EX. 584-G was offered and received in evidence.)

7065 E. S. GUBERNATOR, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

I am with the Lehigh Portland Cement Company in the capacity of General Traffic Manager and have occupied such position since 1926.

Q. Did you receive a subpoena calling for the production of certain papers here today?

A. I did.

Q. Have you produced any papers in response thereto?

A. I am ready to produce them (handing papers to the Examiner).

Q. Can you say whether you produced the papers that relate to both items enumerated in the subpoena?

A. With respect to one item we could find no papers, and no correspondence passing through my office.

Q. Which item was that?

A. May I see that subpoena?

Examiner Norwood: Yes. (Handing subpoena to witness.)

7066 A. That was the second item.

By Mr. Wooden:

Q. Relating to the Engineering News Record?

A. Yes, sir.

Mr. Wooden: Your Honor, may the papers produced under the other item of the subpoena be marked for identification and examined by you?

Examiner Norwood: Yes.

7067 Examiner Norwood: The papers produced by the witness have been looked over and determined to be relevant and are marked "Commission's Exhibits Nos. 1139-A to 1139-4-H, for identification." Here is one sheet that is not marked, dated July 3rd, 1930, with the witness's name typewritten. It appears to be a second sheet of a letter addressed to L. G. McConnell, so I am not numbering that.

Mr. Wooden: It is an incomplete document, is it, Mr. Gubernator?

Examiner Norwood: Yes, it appears to be so.

The Witness: Yes.

Examiner Norwood: Commission's counsel and counsel for the respondents may inspect these and Commission counsel may introduce any of them.

Mr. Wooden: Your Honor, may I see the incomplete paper that Mr. Gubernator has?

Examiner Norwood: Yes.

(Witness hands paper to Mr. Wooden.)

Mr. Wooden: Thank you.

Examiner Norwood: This matter appears to deal mostly with the rate books and all of them appear to be relevant. Since there may be duplicates and it may be cumulative, we can reserve our ruling on the particular papers, until they have been checked over.

7068 By Mr. Wooden:

Q. Mr. Gubernator, did you make a special effort to find the remainder of this letter of yours to Mr. McConnell, of which only page 2 is here, dated July 3rd, 1930?

A. Why, personally I made on effort. The fact of the matter is I was away from the office and my assistant there went through the files and he had a very short while to do it, and he probably did the best job he could.

Q. Will you make an effort to procure the remainder of the letter?

A. I will do so, yes, sir.

Mr. Wooden: Your Honor, may I suggest that this page be given a number for identification?

Examiner Norwood: Let me see it.

(Paper handed to the Examiner.)

7069 Examiner Norwood: This may be numbered 1139-4-I.

(The document referred to is marked "Commission's Exhibit 1139-4-I for identification.")

By Mr. Wooden:

Q. Will you identify, Mr. Gubernator, paper marked for identification Commission's Exhibit 1139-4-I, as a portion of a letter written by you to Mr. McConnell under date of July 3, 1930?

A. I could not identify that portion of it. No, sir. It was taken out of the files. If I had the complete letter perhaps I could.

Q. All of the papers you have produced here came from the files of the Lehigh Company?

A. Came from the traffic files of the Lehigh Company.

Mr. Leisure: I want to make the same objection, your Honor, to the procedure followed in this case that we have heretofore made under the Fourth and Fifth Amendments.

Examiner Norwood: The documents are received, and the same method will be employed as heretofore with regard to the papers produced under subpoena, with the same understanding, with the same objections and exceptions and ruling.

Mr. Leisure: In regard to an understanding, so far as I know I have no understanding with regard to ex-

7070 hibits that have been offered. I am simply objecting to the procedure followed.

Examiner Norwood: Yes.

Mr. Leisure: I have no understanding with respect to that.

Q. Mr. Gubernator, I am showing you now papers previously marked for identification 751-D, 751-E, 749-2-V, and 749-A. Will you identify each of them as either a letter, copy of a letter, written by you or received by you from the parties indicated in the papers.

Mr. Wooden: The papers that I have handed to the witness, I should state, are all from among the group of papers produced some time ago under subpoena duces tecum and on which offer is pending.

A. I have no personal recollection of writing this letter or receiving the other letters. However, they appear to have passed through our office, and I no doubt wrote this letter and no doubt received and read the other letters; but I have no personal recollection of it.

7071 Q. Did you see them at the time that they were taken from your files for production under the subpoena?

A. I did not.

Q. Do you recognize the signature of the parties on Exhibits 751-E to V, and 749-A?

A. Why, that seems to be Mr. Apgar's signature and it seems to be Mr. Guy's signature. I cannot identify, though, Mr. Oliver's signature.

Mr. Wooden: I offer those popers in evidence at this time, renewing the offer previously made.

Mr. Leisure: These documents now being proffered are all under the subpoena, and we renew our objections heretofore made, and we also state that they are incompetent, irrelevant and immaterial in proving or tending to prove any issue in the case.

Examiner Norwood: Any further objection?

7072 (COM. EXS. 751-E, 751-D, 749-VV and 749-A were offered and received in evidence.)

Q. Mr. Gubernator, have you served on any rate committee of the Cement Institute?

A. I served on a rate book committee of the Institute back in 1930.

7073 Q. For how long did your service continue?

A. Oh, until it was washed up—a period of about four or five months—until the Bureau got functioning.

Q. Were you chairman of such committee?

A. I was chairman of that committee, yes, sir.

Q. And who were the other members of it?

A. Why, I think Mr. Carpenter, who was traffic manager of the Penn-Dixie, Mr. Taylor, who was Traffic manager of the International and Mr. Apgar, who was traffic manager of the Alpha, were on the original committee with myself, and at a later date, Mr. Browder, who was the traffic manager of the Alpha at Birmingham, was added to the committee.

Q. Was the International Company that you mentioned, the predecessor or holding company at that time of the Lone Star Corporation?

A. I have no knowledge of any change in the corporation. All I know is that the parties that now are in charge of the Lone Star were largely then in charge of the International operations.

Q. What did this committee that you refer to do with respect to rate books?

A. The committee was organized for the purpose of organization a bureau, and to get it functioning, in the issuance of rate books.

7074 Q. Is that the Bethlehem Freight Bureau that you refer to?

A. Well, the Bethlehem Bureau was the outgrowth of it.

Q. Did that have anything to do with the formation of a similar bureau in Chicago?

A. Nothing.

Mr. Wooden: Your Honor, I would like to suggest that the witness be excused at this time, until we have an opportunity to go over the papers which he produced, which I think will be by this afternoon, so that he can be finished with. Then I would like to recall Mr. Twamley for the time being.

Examiner Norwood: Is that satisfactory?

Mr. Leisure: Yes, except that I am not waiving any objections to the procedure followed.

Examiner Norwood: Yes, I understand that.

JAMES F. TWAMLEY, previously duly sworn, resumed the stand and testified further as follows:

Direct Examination (Continued) by Mr. Wooden.

Q. Mr. Twamley, showing you a paper marked
7075 304-C for identification, and previously identified as coming from your files, will you identify it as a communication that you wrote to Mr. Larned.

A. I identify this; yes, sir.

Mr. Wooden: I offer it in evidence.

7077 (COM. EX. 304-C was offered and received in evidence.)

Q. You refer to the Code in the first paragraph of Exhibit 304-C; was that to the NRA Code, Mr. Twamley?

A. That is correct.

Q. And your policy referred to, with regard to quoting through dealers, was that also with reference to the NRA Code?

A. May I look at that part, please?

Q. Yes (handing Exhibit 304-C to witness).

A. I think in respect to the last two paragraphs, that I was expressing our own ideas on the subject.

Q. I was referring to the first paragraph, of course.

A. The first?

Q. Yes.

A. (The witness examines Exhibit 304-C) I haven't any recollection just what I had in mind.

Q. I am showing you papers now, marked for identification 304-A, 304-P, 304-T and 304-M. They were previously identified as coming from your files. Will you identify them as communications written by you or received by you?

7078 A. I identify these.

Mr. Wooden: I offer them in evidence at this time.

7080 (COM. EX. 304-A, M, P and T was offered and received in evidence.)

Q. Mr. Twamley, I asked you the other day if you could produce your circular to the Trade, announcing your policy with regard to dealers, in 1935. Have you found one of those circulars?

A. I have.

Q. Is that available now?

A. I think so.

Q. Was there only one of those during 1935, or were there two?

A. That is all—one.

7081 (COM. EX. 1140 was offered and received in evidence.)

Q. Can you say how your attention was directed to this statement of policy that is referred to under the word "Announcement?"

A. Yes, sir; we found letters which we quote here in the hands of dealers in building materials very generally.

Q. In other words, other manufacturers put them out and you adopted what you found?

A. At least one other manufacturer.

Q. Do you know who that was?

A. My recollection is that the one that we first saw was Lehigh's announcement. I don't know that that was first.

7082 Q. You found a number of them, however?

A. That is my recollection.

Examiner Norwood: Let me see that a minute.

(Paper handed to the Examiner.)

By Mr. Wooden:

Q. Mr. Twamley, will you supply a list of your arbitrary prices, so-called arbitrary prices, at Boston and New York, like you did for the Washington area?

A. At Boston and New York.

Q. At Boston and New York—current prices.

A. How far do you have in mind, Mr. Wooden, should I go?

Q. You mean as to territory?

A. Yes, the territory—to include what?

Q. I think you had better make it Boston and New York territory, where arbitraries apply. Do you have some applying in the Connecticut and Rhode Island territory?

A. I think there are some in Connecticut and also in Rhode Island.

Q. You will include those, will you?

A. Yes.

Q. What is your approximate mill net on sales made in Boston, on the arbitrary price?

A. I can't answer that.

Q. Do you know what your Boston price is?

A. No, I haven't it in mind.

7083 Q. Do you know what your New York price is?

A. Yes, I know what our New York price is.

Q. What is that?

A. That is $2.14 per barrel in cloth bags and $1.89 per barrel in paper, f.o.b. cars, New York City, or delivered alongside of the dock.

Q. What is that equivalent to in the same terms as the $1.65 Lehigh base price?

A. Are you asking me what our mill net is on this New York price?

Q. Yes, that is what I mean.

A. I believe that price—I believe the mill net on that would be $1.32, exclusive of package, at the terminal stations, and harbor delivery within lighterage limits.

7084 Q. Are there some points in the New York metropolitan area where your net is less than that?

A. Yes, sir.

Q. How much less?

A. Without attempting to be exact, I should say that it was in the neighborhood of fifteen cents at some points.

Q. Can you say what points those are?

A. Well, there are a number of them. I would not attempt to enumerate them.

Q. Can you name some of them?

A. Yes. Stations on the South Brooklyn Railway and on the Long Island Railway, within the boroughs of Brooklyn and Queens; Jamaica, East New York, Vanderveer Park—

Q. All right; that will be enough. Can you say whether your mill net at Boston is less than at New York?

A. I think it is.

7085 *Cross Examination by Mr. Zimmerman.*

Q. Mr. Twamley, do the dealers that buy from you in the New York area compete with one another?

A. Yes.

Q. And referring to those of the competitive area, do they pay the same delivered price for the cement that they buy from your company?

A. They do.

Mr. Zimmerman: That is all.

Redirect Examination by Mr. Wooden.

Q. They pay a different delivered price, depending upon the station to which it is delivered in the metropolitan area, do they not?

A. No, Mr. Wooden. There is one price in the entire Borough of Brooklyn and the Borough of Queens, according to my recollection. We make a delivered price.

7087 E. S. GUBERNATOR, previously duly sworn, resumed the stand and testified further as follows:

Direct Examination by Mr. Wooden (Continued)

Q. Mr. Gubernator, I am showing you papers marked for identification 1139-B, 1139-C, 1139-D and 1139-E. Will you state what they are?

A. Well, this first one, 1139-B, concerned a Cement Institute meeting which was called for the purpose of organizing a rate bureau. 1139-C, 1139-D and 1139-E are apparently a memorandum that I submitted outlining the cost and organization of a bureau.

Q. Submitted to whom?

A. It was submitted to Mr. Taylor, Mr. Apgar, and Mr. Carpenter, with the letter 1139-B.

Q. Is that your writing on the first page of the memorandum, which is 1139-C?

A. Yes, that is my handwriting.

Q. Will you read it, please?

7088 A. (Reading) "This report approved and submitted to Mr. McConnell of the Institute."

Mr. Wooden: I offer that paper, your Honor.

7091 Mr. Leisure: May I ask the witness a question about this pencil memorandum which he identified, your Honor?

By Mr. Leisure:

Q. Mr. Gubernator, Mr. Wooden just stated that you had read from certain pencil notes to the effect that this had been passed upon and approved by the Institute. As I read this memorandum there is no such indication there, and I ask you now whether or not you meant that it was approved by your own committee or by the Institute? Which does the writing mean?

A. Only by our own committee.

Q. These three people that are mentioned in the exhibit here?

A. Yes, sir.

7092 (COM. EX. 1139-B, C, D and E was offered and received in evidence.)

7093 The witness identified Com. Ex. 1139 F as a letter from F. C. Taylor written to him, Mr. Apgar, and Mr. Carpenter, concerning the set up of the Institute rate bureaus; Com. Ex. 1139 R as a carbon copy of letter, dated April 22, addressed to Mr. Browder from Mr. C. N. Apgar; Com. Ex. 1139 S as a conversion table. It is unsigned; Com. Ex. 1139 T as a letter from Mr. Browder to him in relation to the North Carolina freight book; Com. Ex. 1139 U as a letter, dated April 23, 1930 by him to Mr. Browder in relation to the North Carolina rate book; Com. Ex. 1139 X as a letter from Mr. Browder to him in relation to the North Carolina rate book; Com. 1139 Y as a letter, dated April 29, by him to Mr. Browder in relation to the Louisiana rate book; Com. Ex. 1139 Z as a letter, dated April 29, 1930, by him to Mr. F. C. Taylor in relation to the Louisiana rate book. All these papers were produced by witness from his files.

7094 Q. Is 1139-S the memorandum that you said was unsigned?

A. Yes, sir.

Q. You understand that to be referred to in 1139-R?

A. Well, he refers to "conversion table" in 1139-R.

Q. Do you take that to be the one that is referred to there?

Examiner Norwood: Is that the paper that came from a member of the committee, so far as you know?

The Witness: Yes. It indicates—that is, 1139-R indicates that it came from Mr. Apgar.

Your Honor, that has been eight years ago, and I have absolutely no personal recollection. All I can say is that the papers were in the file.

Mr. Wooden: I am offering those papers at this
7095 time: 1139-F, 1139-R, 1139-S, 1139-T, 1139-U, 1139-X, 1139-Y and 1139-Z.

Mr. Leisure: Your Honor, as to 1139-X, T, F, Z, Y and U, I have no objection. As to 1139-R, it is a memorandum addressed to Mr. Browder, who has been on the stand, and was written by Mr. Apgar, who has also been on the stand.

In the left hand corner it says "E. S. Gubernator, G. T. N., Lehigh Portland Cement Company, Allentown, Penn." This was produced by Mr. Gubernator under his subpoena.

1139-S has not been identified in any way; and I object to 1139-S.

7097 (COM. EX. 1139-F, 1139-R, 1139-S, 1193-T, 1139-U,
7098 1139-X, 1139-Y and 1139-Z was offered and received in evidence.)

The witness identified Com. Ex. 1139 2A as a paper dated May 1, 1930, from Mr. Browder to him, in relation to the Louisiana rate book; Com. Ex. 1139 2B as a letter dated May 1, from Mr. Taylor to Mr. Tomilson in New Orleans, in relation to the Louisiana rate book; Com Ex. 1139 2C as a letter dated May 16, from Mr. Browder to Mr. H. C. Carpenter, in relation to several southern rate books, including Georgia, Mississippi and Tennessee; Com. Ex. 1139 2F as a letter from Mr. Taylor to witness, Mr. Apgar and Mr. Carpenter in relation to the size of the rate books; Com. Ex. 1139 2M as a letter from him to Mr. Taylor, Mr. Apgar, Mr. Carpenter and Mr. C. R. MacCarey, which relates to a draft of a letter to Mr. McConnell on a matter that has been the subject of a discussion.

Mr. Wooden: I offer these in evidence.

7101 Examiner Norwood: I think it is very clear that these papers bearing on the making and distribution of that rate book are relevant.

I should like to see them, if counsel is through.

Mr. Zimmerman: Yes. Thank you.

(The papers are handed to the Examiner.)

Mr. Wooden: I would like to see those that are said to be between third parties.

Mr. Leisure: When I said "third parties," I of course meant others than the witness.

Mr. Wooden: They are between the parties to the case.

Examiner Norwood: Correspondence shows that Mr. Browder was connected with this actively and was in correspondence with this witness and also these other traffic managers named.

Mr. Leisure: There is nothing to show that that activity which your Honor has mentioned was a continuing activity or is continued today in any way. There is nothing on the action there on which a cease and desist order can be based.

Examiner Norwood: We will have to rely on the
7102 whole record for those matters.

(COM. EX. 1139-2A, 1139-2B, 1139-2C, 1139-2F and 1139-2M was offered and received in evidence.)

By Mr. Wooden:

Q. Mr. Gubernator, I show you papers marked for identification 1139-2N and 1139-4I. I will ask you if those two papers are not part of the same letter.

A. It is part of the same document, I would say. I do not know whether it is a letter. I do not know whether it is a letter or not.

Mr. Leisure: Did you write the document?

The Witness: My name is signed to it. As I say, I have got no personal recollection of any more than there was a committee and we got the bureau in operation.

By Mr. Wooden:

Q. And you brought this from your files among the other papers under subpoena?

A. Yes, this was with my files; but whether that letter was ever sent I do not know.

Mr. Wooden: Your Honor, this is the paper that
7103 I asked the first part of the letter to be produced this morning. It appears to have been among the papers, only separated, and it bears the same date on both sheets: July 3, 1930.

I offer it at this time.

7104 (COM. EX. 1139-2N and 1139-4I was offered and received in evidence.)

7105 The witness identified Com. Ex. 1139 2o as a letter dated July 5, 1930, from Mr. Apgar to him, referring to witness' letter of July 3, on a subject which
7106 does not appear from Mr. Apgar's letter. Com. Ex. 1139 2O acknowledges receipt of Com. Exs. 1139 2N and 1139 4I which is witness' letter of July 3rd, but that letter is not addressed to Mr. Apgar, it is addressed to Mr. McConnell.

Q. Did you send it to more than one person?

A. According to that letter—that letter is addressed to Mr. McConnell.

Q. Did you send copies to any other persons?

A. I don't know.

The witness identified Com. Ex. 1139 2P as a letter dated

July 7, 1930, from Mr. Carpenter to him, acknowledging witness' letter of the 3rd and mentioning a draft of a letter to Mr. McConnell; Com. Ex. 1139 2Q as a letter dated July 9, from Mr. Taylor to him, referring to witness' letter of July 3rd but not identifying the contents; Com. Ex. 1139 2V as a letter dated July 18, 1930, to Mr. Browder from him, in relation to North Carolina and Florida rate books; Com. Ex. 1139 4E as a letter from Mr. McConnell to him in relation to the Louisiana rate book; Com. Ex. 1139 4F as a letter from Mr. Apgar to him discussing the mat-
7107 ter of set of rate books; Com. Ex. 1139 4G as a letter from Mr. Carpenter to him acknowledging witness' letter of August 5th in relation to issuing supplementary rate books to cover producing points that were not provided for in the present books; Com. Ex. 1139 4H as a letter from Mr. Taylor to him in relation to the former rate books and "a scope of origin points."

(COM. EX. 1139-2-O, P, Q, V, 4-E, F, G and H was offered and received in evidence.)

7108 Q. Mr. Gubernator, some reference is made there in that last collection of correspondence to a proposal to have two sets of rate books?

A. That is discussed in the correspondence, yes, sir.

Q. Were there ever two sets placed in effect, to your knowledge?

A. Not to my knowledge.

Q. In any part of the country?

A. Not to my knowledge.

Q. Was it the proposal to have the two sets so that salesmen could have one and the head offices could have the other?

Examiner Norwood: Answer that with respect to a proposal that your committee considered, regardless of where it came from.

The Witness: Will you read the question, please?

(Pending question read.)

A. I have no recollection whatever in the matter
7109 except as shown in the correspondence.

By Mr. Wooden:

Q. Was it the proposal that the set to be used by salesmen would be different in its headline points from the sets proposed to be used by the main offices?

Mr. Leisure: Again, your Honor, I would like to know where the proposal was made and by whom.

Examiner Norwood: Counsel will bring that out if he says there was such a one.

Mr. Wooden: It was a proposal considered by his committee, and the subject of this correspondence.

A. I don't know that it was a proposal, Mr. Wooden.

By Examiner Norwood:

Q. Was that considered?

A. (No answer).

By Mr. Wooden:

Q. You referred to a proposal—you have two sets?

A. Where?

Q. I thought you referred to it a few minutes ago.

A. In the correspondence?

Q. No, in your testimony.

A. I said I had no recollection of anything except as shown in the correspondence. Now, if it is not in the correspondence, I did not discuss it.

Q. Didn't you make some reference a few minutes 7110 ago in your testimony to a proposal?

A. Not that I recollect. I may have mentioned that in describing one of the exhibits, but I have no recollection of testifying on that point.

Mr. Wooden: Nothing further, your Honor.

Examiner Norwood: Examine.

Mr. Wooden: All except this, that I do want to return to the witness papers that were marked 1139-A, H, G, I, J, K, L, M, V, W, 2-D, 2-E, 2-G, 2-H, 2-J, 2-K, 2-L, 2-R, 2-S, 2-T, 2-U, 2-W, 2-X, 2-Y, 2-Z, 3-A, 3-B, 3-C, 3-D, 3-E, 3-F, 3-G, 3-H, 3-I, 3-J, 3-K, 3-L, 3-M, 1139-N, O, P, Q, 3-N, 3-O, 3-P, 3-Q, 3-R, 3-S, 3-T, 3-U, 3-V, 3-W, 3-X, 3-Y, 3-Z, 4-A, 4-B, 4-C, and 4-D. (Handing papers to witness.)

Examiner Norwood: Let the record show that they are returned to the witness.

Are you through with this witness? Any cross examination?

Mr. Leisure: Yes sir; one question.

Cross-Examination by Mr. Leisure.

Q. Mr. Gubernator, this Committee that Mr. Wooden has been questioning you about—as I understood your testimony, in the beginning it was set up for the purpose

of doing this work, and lasted about two or three months?

7111 A. It was set up for the purpose of getting the Bureau started—the Cement Institute Bureau at Bethlehem—and it petered out—it started in April and it was all cleared up in, I think, about August.

Q. That was 1930?

A. 1930.

Mr. Leisure: That is all.

Redirect Examination by Mr. Wooden.

Q. Was your committee sometimes known as the Cement Rate Committee?

A. I don't recall except by the papers, what the official name of the committee was, if any, and the fact of the matter is that after it got going it dwindled down to almost a one-man committee, and as soon as the work was done why, the committee dried up.

Q. Who was the one man?

A. Primarily I, to egg them on to get the rate books printed.

Q. Was the committee ever known as the General Committee?

A. General Committee?

Q. Yes.

A. I never heard of a general committee.

Q. Who was elected to the committee?

A. Why, as I recall it, I think the Cement Insti-

7112 tute called a meeting there and just who were there I don't have any recollection now. I don't even have any recollection of the meeting, but I know that as a result of a meeting, why, this committee was formed, and I was made the chairman.

Q. At a meeting of the Institute or—

A. An Institute meeting, that is, it was called by the Institute.

By Examiner Norwood:

Q. Did you make your reports to the Institute?

A. Sir?

Q. Did you furnish data or make reports to the Institute?

A. I don't know—you mean me personally?

Q. No, your committee.
A. Why, yes, I reported to Mr. McConnell of the Institute.
Q. Yes?
A. That is, of the progress.

By Mr. Wooden:

Q. Mr. McConnell was the general manager of the Institute?
A. I think his title is shown on—in the letters I addressed. I addressed him as general manager.

7113 J. H. ACKERMAN, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

I am sales manager of the Lawrence Portland Cement Company but am not an officer of the company. I have been connected with the company since about 1920 and have been sales manager for five or six years. I was assistant sales manager prior to that. My father is
7114 vice president of the company. There is no vice president in charge of sales. The president is my superior officer and I am naturally subject to his orders. I would say that there is no one besides myself directly or specially in charge of sales.

Lawrence has two plants, one in Pennsylvania and one in Maine. The one in Pennsylvania is either Northampton or Siegfried. Northampton is the post office and Siegfried is the freight station. The one in Maine is Thomaston which, I believe, is the post office and Rockland is the rail station. I think the Maine plant started to produce Portland cement in 1928. The one at Northampton is much older. I think they started to produce Portland ce-
7115 ment in 1889. The plant in Pennsylvania, I would say, is capable of producing about 2,300,000 barrels and the plant in Maine about 1,200,000 barrels.

Q. What is the territory within which your two mills make their sales?
A. Well, I would say, roughly, from Maine as far south as Virginia, roughly west to Altoona, parts of New York

State, that is, the eastern part of New York State, and maybe little areas here, there, and elsewhere, where we do not seek business.

Q. How many salesmen do you have?

A. I think it is thirty, including three district managers.

Q. Is your mill at North Hampton what is known as a base point mill?

A. May I ask what you mean by "what is known as a base point mill"?

Q. Well, is it a base point mill?

A. I would say yes.

Q. Is your mill in Thomaston, Maine—is that the place?

A. Yes.

Q. Is that a non-base point mill?

A. It is not a non-base point mill.

Q. It is what, then?

A. We have a base at that mill.

7116 Q. How long have you had it?

A. We established a base there by sending out new prices on the 11th of May, this year. They were mailed, I believe, the 11th of May, effective the 12th of May.

Q. That is this month, you mean?

A. Yes, sir.

Q. Up to that time the Thomaston mill had not been a base point mill?

A. That is correct, sir.

Q. During all the time that you had it?

A. That is correct, sir.

Q. What is the base price at the Thomaston mill that you put in so recently?

A. $2.40, including cloth sacks.

Q. Can you say how that price was arrived at for that mill?

A. Well, that is a pretty hard question to answer. It was arrived at after a great deal of study and thought on our part.

Q. I mean, how was it built up: what are the factors that go to make it up?

7117 The Witness: Well, after all, your Honor, I did not make the price. I was instructed to send out quotations on that basis.

Examiner Norwood: Do you know what the price is based on?

The Witness: No, sir.

By Mr. Wooden:

Q. What was its relation to the price that existed there prior to your making it a base point mill?

7118 The Witness: I will answer the question as best I can. I do not recall what our delivered price was in the City of Rockland, which is the nearest town to the plant. I would estimate it was somewheres around 2.90 in cloth sacks delivered. Today's destination price at Rockland, as best as I can recollect, would be 2.69.

By Mr. Wooden:

Q. So you lowered the price, then, by putting in the base at this recent time?

A. We lowered what price, sir?

Q. Your price at that point.

A. Yes, sir.

Q. Prior to that time how was your Rockland price made up?

A. Our price for delivery at Rockland would be what we considered the lowest competitive price at that station.

Q. Did you arrive at it by adding the freight

7119 from Hudson Valley?

A. I do not think I quite understand your question. Did we arrive at it?

Q. Did you arrive at it by taking the Hudson Valley base and adding the freight from Hudson Valley?

A. As I said before, we met the competitive price at that station, which no doubt was a Hudson River plus rail delivered price.

7121 Q. I believe your former price at Rockland was 2.90?

A. Well, I think I ventured the opinion that that is what it was. We do business, try to do business, at four or five thousad different stations, and I do not try to keep freight rates in my head. I made that guess at $2.90; and just let me do a little figuring in my head and I will see what freight I must have used mentally.

Q. All right; do that.

Mr. Leisure: The freight rate books are in evidence, your Honor. There is no occasion for the mental gymnastics of the witness. That can be ascertained exactly, rather than by testing the witness' memory.

Examiner Norwood: It was not clear just what he had in mind.

By Mr. Wooden:

Q. I want to get an approximation.

A. Well, I guess 75 cents a barrel.

Q. How much freight or switching charge, if
7122 there be one from your plant into Rockland?

A. That I don't know, sir.

Q. I am showing you paper marked for identification 272-C, previously identified as being furnished by you to a representative of the Commission, Mr. Widman. Will you state what it is?

A. Well, this is a sketch, as I recognize this handwriting and the initials down below, made by one of the clerks in our office.

Q. Does it represent the territory in which your Thomaston plant sold, and the territory in which your North Hampton plant sold?

A. Presumably; yes, sir.

Mr. Wooden: I offer that in evidence your Honor.

Mr. Leisure: Do you know the date this exhibit was made?

The Witness: No, sir.

Mr. Leisure: Or what date it applies to, at all?

The Witness: No, sir.

7123 Q. Does it represent the market area of the two mills of your company, or did it at one time?

A. It is a map of the Northeastern part of the United States, and that is where we do business.

By Examiner Norwood:

Q. But as it is marked there, does it represent that?

A. No, sir. I noticed that the address is 270 Broadway, and we haven't been there for, I believe, three years. We do solicit business today in Virginia. Whether we did at that time; I don't know.

7124 By Mr. Wooden:

Q. Can you state when Mr. Woodman called on you and received this map?

Mr. Leisure: It is stamped on the back,—counsel just stated it.

Examiner Norwood: Well, he can ask him if he can state it.

A. He was there in the fall of 1936 as I recall.

By Mr. Wooden:

Q. Did he ask for this map or how did you come to provide him with it?

A. Mr. Woodman asked us to produce certain files. I gave him a desk and the files, and told him to go to it. No doubt he picked that up from the files.

7125 Q. Can you say, Mr. Ackerman, what the factors were which led to the putting in of a base price at your Thomaston Mill recently?

A. Well, I think there were two factors. One is that we have become a lot more price-base conscious in the last few months. We have always considered the advisability or inadvisability of putting a base at that plant. And the second reason was the fact that we were up against competition on foreign cement on a very large operation at not a very great distance from our plant.

Q. What large operation was that?

7126 A. A dam and power house at Mattawanke.

Q. Did you put in the new base at your Thomaston Mill before or after the day you were subpoenaed here?

A. I believe it was one day before.

Q. You put your price in on the 11th of May?

A. I beg your pardon?

Q. You put your new price in on the 11th of May?

A. It was mailed on the 11th of May.

Q. Is that the day you were served to appear here?

A. I believe the day that friend Paulson dropped in to see me over there and I was in Baltimore and he came in the next day. (Addressing Mr. Paulson) Is that correct?

Mr. Paulson: I don't remember the date.

By Mr. Wooden:

Q. He dropped in on the 11th then?

A. I got that good news over the phone from Baltimore.

Q. And that was on the 11th?

A. Yes, sir.

Q. Do your salesmen carry the freight rate books of the freight rate bureau of the Institute?

A. Some of them do, I think, yes, sir.

Q. What use do your salesmen make of them?

A. Well, occasionally they use them to figure out the freight to enable them to arrive at some of our prices.

Q. Delivered prices?

7127 A. Yes, sir.

Q. Do you use them in your office for some other purposes?

A. Yes, sir.

Q. Do you have in your offices what might be called a master price list that is calculated by using the freight rate information in the freight books?

A. No, sir; I wouldn't say that we would have a master price list. We have—all instructions to salesmen and district sales managers are sent from our New York Office, and instructions to salesmen are sent from our New York Office.

Q. Do you provide your salesmen each with a list of delivered prices in their territory?

A. Not every destination, no sir.

Q. For the most part is that the case?

A. Well, they are instructed on our price policy. They are given lists where necessary. I think the average salesman calls his district office or the main office for confirmation. They do not accept verbally—their habit is to make prices verbally—they do not confirm.

Q. Do you exercise any discretion in varying prices from the delivered basis which you ordinarily have in effect?

7128 The Witness: As a policy, we name whatever prices we chose to name.

7129 By Examiner Norwood:

Q. Do you ever vary from your regular price at a given time?

A. You mean in the nature of a cut price?

7130 Q. Yes?

A. No, sir; we try to maintain a one-price policy.

By Mr. Wooden:

Q. What do you consider a cut price?

A. Well, from time to time we have notified our customers and our prospective customers as we call them, our destination price at certain stations, and until such time as we change those prices, the original prices were our going prices. Now, if we alter one of those prices independently of the other by a cut or rebate, or something of that nature, I would say that would be a special price.

7131 Q. A price cut?

A. I would consider it a price cut, yes, sir.

Q. Is the delivered price at the various stations where you deliver cement ordinarily the same as the delivered price there of your competitors?

A. I trust so.

Q. Do you try to make them so?

A. No, sir. Not necessarily. I want to get all I can get for our cement.

Q. You say you trust so?

A. Well, yes, sir; I said I trust so.

Q. Do you expect them to be so?

A. Well, if they are higher we won't get the business.

Examiner Norwood: Do you endeavor to reach the same price that your competitor quotes?

The Witness: In most cases, yes sir.

Q. Is the delivered price at the various destinations where you do business the equivalent of the lowest sum of base price plus freight from basing points?

A. Usually, yes, sir.

Q. Before you put in your Thomaston base, was the price in New England territory equivalent to the sum of the Hudson Valley base plus freight?

A. Not necessarily.

7132 Q. Except in areas where there were arbitrary prices in effect?

A. Or areas where it was Lehigh Valley plus freight.

Q. Whichever made the lowest sum?

A. Whichever made the lowest sum; yes, sir.

Q. The lowest sum of the base price plus freight?

A. Yes, sir.

Q. Can you say roughly what territory had its delivered price made on the Hudson Valley base, and what on the Lehigh Valley base, in New England?

Mr. Leisure: Is this with reference to this witness' mill, or with reference to other mills?

Examiner Norwood: Read the question.

(The question is read by the reporter.)

Examiner Norwood: I think that is a very definite question.

The Witness: That is, territory served by where we seek business?

Mr. Wooden: Yes.

The Witness: No, sir; I couldn't answer that question.

By Mr. Wooden:

Q. Can you answer the question in a general way, as to what territory in New England the Lehigh base controlled and what territory the Hudson Valley base controlled?

7133 Mr. Leisure: I object to that on behalf of the Lehigh Company. This witness is not competent to testify what the Lehigh Company base is.

Mr. Wooden: Lehigh Valley, I mean.

Mr. Leisure: Well, as to any other of the respondents.

Examiner Norwood: Objection overruled. Answer the question.

Mr. Leisure: May we have the time specified?

Examiner Norwood: You can bring that out later on. He is speaking of the present time, I think.

Mr. Wooden: Prior to the establishment of their new base in Maine.

Examiner Norwood: Read the question.

(The question is read by the reporter.)

Examiner Norwood: I understood it to be in the present tense. The counsel has since specified the time.

Mr. Leisure: I understood it to be in the present tense, but I wasn't sure.

The question, your Honor, was asked him a moment ago in regard to how he made up his price. I think he was then testifying as to how he made them up prior to the time they made the base. I believe the witness was confused in that answer, and I believe he may have been

7134 confused in this one.

Examiner Norwood: You may clarify that in cross examination.

The Witness: Mr. Wooden, in answer to that question, I am not a traffic expert, but I would say, generally speaking, that the rates on cement, whether from the Lehigh Valley group of mills or from the Hudson River group of mills, is substantially the same, on a mileage basis.

Now you refer to New England. Some people include Connecticut as part of New England. Certain parts of Connecticut, rate-wise, take a lower rate, I believe, from the Valley than they do from Hudson. Certainly, parts of Massachusetts, Western Massachusetts at any rate, would take a lower rate, a lower rate of freight, from the Hudson group than they would from the Valley group.

There are certain places in Vermont where you might say they meet.

7135 By Mr. Wooden:

Q. Equal? Equal freight?

A. I would say that they meet. I know there is some irregularity. It is difficult to give a yes or no answer to your question. That's all.

Q. I didn't call for a yes or no answer. I called for a general answer.

A. There are so many ramifications in connection with it.

Q. Do you have in mind the difference of ten cents a barrel between the Hudson and the Lehigh Valley bases?

A. In some cases it is greater, sir.

Q. What are you speaking of?

A. I beg your pardon?

Q. What time are you speaking of?

A. Well, I have not personally handled freight rates in a number of years, but there are two rates that stick out in my mind, in Boston. From the Valley it was 19 cents per 100 pounds, and from Hudson it was 15½ cents 100 pounds.

Q. You are speaking of the difference in price between the two?

A. No, I am talking about the rate per 100 pounds from the Lehigh Valley mill to Boston, and Hudson to Boston.

Q. I am speaking of the difference in the base
7136 price between Hudson and the Valley.

A. I don't believe I understood your question.

Q. That is what I was referring to. That makes a difference in the territory that would be controlled by each, the sum of the base price plus freight?

A. I do not quite understand what you mean by "controlled."

Q. Well, the territory in which the price, the delivered price, is the sum of the base price at a particular place, plus freight, in which it is a going price, in other words. Is that clear?

Examiner Norwood: In which that sum is lower than the other, or the standard price.

A. O. K.

Q. You referred a while ago, Mr. Ackerman, to your following a one-price policy. Do you mean by that that

your delivered price at any given point is the same to all customers at that point?

A. All customers of the same class.

7137 Q. Yes.

A. Yes, sir.

Q. You don't mean that your mill net realizations are the same from all customers?

A. No, sir.

Q. They vary rather widely, do they not?

A. You are talking about customers at the different destinations?

Q. Yes.

A. Yes, sir. They do vary widely.

Q. What is the average mill net that you have obtained at your two plants, each of your two plants?

A. When?

Q. Well, say over the period of the last year.

A. I wouldn't care to say. It would be a guess.

Q. What is the minimum mill net that you have?

A. I don't think we have such a thing as a minimum.

Q. In practice, how low has it gone during the last year?

A. What was the lowest?

Q. Yes.

A. The lowest price we netted at one of our plants?

Q. Yes.

A. I couldn't tell you, sir.

Q. What is the range, the approximate range, be-

7138 tween your highest mill net and your lowest mill net?

A. That I couldn't say offhand.

Q. Isn't there a range at times? Hasn't there been a range at times as much as fifty cents or more?

A. Yes, sir.

Q. When you figured on the 75-cent rate from the Hudson Valley to Rockland, that freight there was in addition to your mill net, wasn't it?

A. There was a great profit.

Q. Of that amount?

A. Yes, sir. What amount?

Q. The amount of the freight rate.

A. Well, there was the difference.

Q. Can you compare your mill net with your costs in order to determine whether you are making or losing money?

A. Well, that would determine it. I don't know as I quite understand your question.

Q. That would determine it?

A. Yes, a comparison between what you get and what it costs you would indicate the profit or loss, I should think.

Q. Do you have a record which shows your average mill net?

A. Yes, sir. That is, the company has. I have not.

Q. Do you report those figures to the Bureau of Mines?

7139 A. I don't recall whether those go to the Bureau of Mines or not.

Q. Do you have records which show the distribution of your cement as to the territory in which it goes?

A. We have it by states.

Q. Is that furnished to the Bureau of Mines also?

A. I assume so.

Q. Will you provide a statement which shows your average net price received at each of your two mills, the production of each mill, and the distribution by states of each mill, for a period of the last five years?

A. Will we?

Q. Yes.

A. I assume that by production you mean shipments, not what is manufactured?

Q. Yes; shipments.

A. Yes, sir.

Q. How long will it take you to get that?

A. We ought to get it by noon tomorrow.

Q. Will you undertake to produce it by that time?

A. I will endeavor to do so; yes, sir.

7141 New York City, N. Y.
Thursday, May 26th, 1938.

7142 Mr. Leisure: I would like to make a correction here, your Honor. I do not know whether it is a correction or not, at least it is something that should be straightened out.

When Mr. Apgar was on the stand Exhibits 1139-A, 1139-B, 1139-C and 1139-D were marked. Then, when Mr. Gubernator was on the stand, 1139-A to 1139-4-H were also marked. They are different exhibits, and they have the

same numbers; so we will have to get that cleared up.

Examiner Norwood: They were both received?

7143 Mr. McFadden: No, it happens that each man brought a certain set of material with him under subpoena, and part of one group was received in evidence.

Mr. Wooden: Can't the reporter straighten that out?

Examiner Norwood: I don't think so. We will have to give them a new number.

7151 Mr. Leisure: These exhibits, your Honor, 1139-A, 1139-B, 1139-C, and 1139-D, submitted by Mr. Apgar, are referred to on pages 7045, 7046 and 7047; and I request that we have those exhibits re-numbered as Commission's Exhibits 1141-A, 1141-B, 1141-C, and 1141-D for identification, and that your Honor direct that the pages be correctd accordingly. I think that will straighten that out.

Examiner Norwood: Let the correction be made as suggested.

Mr. Wooden: Mr. Ackerman, will you please take the stand?

J. H. ACKERMAN, previously duly sworn, resumed the stand and testified further as follows:

Direct Examination by Mr. Wooden (Continued).

Q. Mr. Ackerman, when your Pennsylvania mill goes into a market area, where another base point price prevails, do you shrink your net according to meet the delivered prices prevailing in that territory?

A. We meet that delivered price.

Q. In the course of your doing so do you shrink your net?

A. It results in that, no doubt.

Q. When other mills from such a territory come
7152 into the territory where your base price prevails, do they meet your delivered price at those points?

A. I do not think I can say what the other mills do, can I, sir?

Examiner Norwood: If you know it.

Q. You said yesterday that delivered prices at given destinations of different mills, I believe, are ordinarily the same?

The Witness: May I have the question again, please?
(The question is repeated by the reporter.)
Examiner Norwood: When the circumstances are reversed, do they meet your price?
7153 The Witness: I think that the answer is yes.

By Mr. Wooden:

Q. And with a consequent shrinkage in their nets in such territory?
7154 The Witness: I think I can answer that question by giving an illustration in our own case.
Examiner Norwood: Go ahead.
The Witness: If our Pennsylvania plant for some reason shipped cement to a destination at which the price was figured from our Rockland base, it would be necessary for our Pennsylvania plant to shrink its base.
Does that answer your question?
Mr. Wooden: That is one side of it.
Examiner Norwood: You mean shrink its mill net?
Mr. Wooden: And if the Hudson mills shipped into that territory, would the same thing be true?
The Witness: Yes, sir.

By Mr. Wooden:

Q. Do you ship into Western Pennsylvania?
A. Will you define what you mean by Western Pennsylvania?
Q. Do you ship into a part of Pennsylvania where the Universal price is the basing point?
7155 A. Yes, sir.
Q. Do you shrink your net in so doing?
A. We get less than our millbase at that destination.
Q. Does the Universal mill near Pittsburgh come over into your Eastern Pennsylvania territory?
A. I couldn't say, sir.
Q. Or any other territory where your base price prevails?
A. That I do not know.
Q. Do you come in competition with them in bidding at various places?
A. Will you tell me what mill you mean by the Universal mill?
7156 Q. I meant the one near Pittsburgh. But let us vary the illustration by taking the mill at Buffalo. Does the same thing hold true there?

A. I do not know whether the Buffalo Mill ships into Pennsylvania. One of the owners of the Buffalo Mill has a mill in the Valley. I assume that they might use a Valley mill, or circumstances might force them to use their Buffalo mill.

Q. How about the Green Bag Cement Company? Is that in Pennsylvania?

A. I really do not know.

Q. You don't know then, as a competitor in your sales' territory at all?

A. We may compete on the fringe, but I couldn't say. I do not consider them a principal competitor.

Q. Do you go into the territory where the base price under which Green Bag Cement Company operates exists?

Mr. Wooden: I was speaking of the Pittsburgh-
7157 Neville Island Green Bag.

The Witness: I don't know what price base the Green Bag used.

A. I think I testified yesterday that we did not seek business west of Altoona.

Q. But you do have some business in that territory, that requires you to shrink your mill net when you go into it?

A. It would cause us to do so; yes, sir.

Q. And you have some business there that does cause you to shrink your mill net?

A. Yes, sir.

Q. With the exception of this recent, very recent establishment of a base at your Thomaston mill, have you been the initiator of price changes?

A. We initiated one price change that I recall, sir.

Q. In what length of time?

A. I do not understand your question.

Q. I mean, over what period of time?

A. When did we do it?

Q. No. You say you remember initiating one price change. I am saying, "Within what period of time did you have in mind when you said you remembered one?"

7158 A. Five years.

Q. You mean the last five years?

A. Yes, sir.

Q. That is not the recent change?

A. I had in mind another one, sir.

Q. You mean at your Pennsylvania mill?
A. Yes.
Q. Can you say about when that was?
A. I think it was July 11, 1933.
Q. Was that an increase or a decrease?
A. Increase.
Q. Did you send out notices to your trade on the increase?
A. Yes, sir.
Q. Did your competitors follow you up on it?
A. The price stuck.
Q. I take it that is an answer. How soon did they follow you: within the five-day period that you used to announce the change?
A. I would think so.
Q. Have you any other reasons to state besides the ones you mentioned yesterday that entered into the very recent announcement of base price at your Thomaston mill?
A. No, sir.
7159 Q. How many barrels were involved in that dam project?
A. 105,000.
Q. Did you have any discussion with the purchaser with regard to making a base out of your mill at Thomaston?
A. No, sir.
7160 Q. Has the award been made on that dam—what is the name of that dam?
A. Mattawanke.
Q. Has the award been made on it for the cement?
A. We have signed a contract on it, sir.
Q. For the entire requirements of cement?
A. Yes, sir.
Q. When did you make the contract?
A. I think it was the 18th of May.

7161 JACOB GOTTSCHALK, recalled, resumed the stand and testified further as follows:

Direct Examination by Mr. MacIntyre.

Q. Mr. Gottschalk, I am showing you Commission's Exhibit 1043-2-A, and ask you to state whether or not it appears to be the best available contemporary documentary record of the contents set forth therein.

Mr. Leisure: I object to that question. The document will speak for itself as to that.

Examiner Norwood: I think it calls for a conclusion—a legal conclusion—of the witness.

Mr. Zimmerman: 1043-2-A, isn't it?

The Witness: Yes.

Examiner Norwood: Counsel will have to bring out the fact whether it is an original, and if not, where the original is. You have to ask matters of fact on
7162 it. The objection is sustained.

7163 Q. Were you present at a meeting in New York on July 22nd, 1931, at which meeting there were present Mr. W. W. Campbell, Mr. E. J. Holloway and Mr. D. H. McFarland, and at which time there was a discussion relative to the motor truck transportation of Portland cement?

A. I was present at a meeting in New York on July 22nd, primarily called by traffic executives of the trunk lines for the consideration of various questions, and at that meeting I have reason to believe that these gentlemen were present to present problems which I discussed
7164 in my testimony on March 29th.

Mr. MacIntyre: 1938.

7165 Examiner Norwood: I asked you to tell us the particulars as to your knowledge of the presence of the men.

The Witness: I made a memorandum of the names of the gentlemen who were present.

By Mr. MacIntyre:

Q. And did your memorandum show those?

A. My memorandum showed those men to be present; consequently those names appear in our record.

Q. Showing you Commission's Exhibit 1043-2-A, I ask you to state whether or not you recognize that as a record of the notes that you made of the meeting which you attended?

A. It is a copy of the memorandum, but not one which was prepared in our office, not prepared by me or under my supervision. I have compared it, however, and find that it agrees with the record which we have.

Q. It is a correct copy of the record in your office?

A. That is right.

Q. And the record in your office is in what form?

A. It is an extract from the proceedings of the meeting of July 22, 1931, which, as I have stated, was called for the consideration of other questions, various questions of which this was one.

Mr. MacIntyre: I will now ask Mr. Leisure if he will be willing to accept this subject to the check with
7166 the copy in the office as being as good as the copy in the office.

Mr. Leisure: I will raise no question to the fact that it is a photostatic copy.

Mr. MacIntyre: It is a mimeographed copy.

Mr. Leisure: Or a mimeographed copy.

Are you offering it now?

Mr. MacIntyre: No, it is in evidence. I am merely asking this witness these questions for further identification of it.

Mr. Leisure: That depends upon how we interpret the Commission's order. It read, "Motion denied", but also gave certain instructions to the Examiner as to what material should be kept out, and, as I interpret the order, it instructed the Examiner to keep out improper evidence. This clearly is improper evidence. The witness is on the stand. There is no occasion whatever or any excuse for offering a memorandum that he made. He can ask him what he did, what he saw and what he heard, but without first exhausting his recollection or showing that there is some excuse for applying it, to impeach the witness or some other ground for the memorandum going in evidence, it is clearly improper and I think comes under the Commission's ruling.

7167 Mr. Wooden: Your Honor, the Commission's ruling, as I recall it, was to hold the documents which your Honor admitted in evidence to be competent, relevant and material. I do not know whether your Honor has a copy of it.

Mr. Leisure: There (exhibiting a paper) is a copy of it.

Mr. Wooden: But instructed you to exclude such of them as were not shown to be the best available contemporaneous documentary records.

Mr. Leisure: That is correct.

Examiner Norwood: That is the way I understood it. In other words, the documents are in evidence at this time, but if on further identification it appears, or on further testimony it appears it is not the best evidence, then I should withdraw the exhibits.

Mr. Wooden: Your Honor, the ruling of the Commission is that if these documents are shown to be the best available documentary contemporaneous records and not the best evidence, in a broad general way, but the best available contemporaneous documentary records.

Examiner Norwood: I think so.

7169 Mr. Leisure: As I understood your Honor's statement, the burden of course is on counsel for the Commission to show that they are the best evidence. That cannot be passed along to us.

Examiner Norwood: I do not think so. I think, from the prior circumstances, if we get further information in regard to this I am to decide whether or not that is a compliance with the Commission's instructions.

7170 Mr. MacIntyre: Did I understand, Mr. Leisure, did I understand you to say that you are willing to accept this as the best documentary record of the contents therein subject to check?

Mr. Leisure: Not at all. It is my contention it is not the best evidence.

Mr. MacIntyre: I am talking about the documentary record of the contents on the face of Exhibit 1043-2-A.

7172 Mr. Leisure: May I state for the record: Quite aside from the Commission's order there is no rule of evidence that would allow this memorandum to go into evidence, regardless of what the Commission may or may not have done; so I do not want to confine my objection to the Commission's order. It is incompetent, irrelevant and immaterial.

Examiner Norwood: Counsel may go ahead now and bring out any matters of fact in regard to this paper.

By Mr. MacIntyre:

Q. Mr. Gottschalk, I now show you Commission's Exhibits 1043-2-E and 2-F, and ask you to state whether or not that is a notice you prepared and circulated concerning the meeting of July 22nd, about which we have just discussed? (Handing papers to the witness.)

Mr. Leisure: Prepared and circulated to whom? Railroad officials or cement—

7173 Examiner Norwood: (Interposing.) Tell us to whom.

The Witness: I recognize it as a mimeographed copy of a circular letter which was transmitted by our office to members of the Trunk Line Executive Traffic Committee.

By Mr. MacIntyre:

Q. And it was transmitted and circulated in that form?

A. Sent only to members of the Trunk Line Association Traffic Executives Committee in the form which is—

Q. Was it ever prepared in any other form?

A. Not so far as I know.

Q. In other words, this is—

A. That is one of the copies prepared.

Mr. Leisure: We make the same objection, your Honor, as we did to the last exhibit.

Examiner Norwood: Yes. Off the record.

(Discussion off the record.)

By Mr. MacIntyre:

Q. Mr. Gottschalk, I now show you Commission's Exhibit 1043-3-A and ask you to state whether or not you recognize it as a form letter from your office, that is, the office of Mr. R. N. Collyer to certain railway officials, dated August 25th, 1931.

7174 A. I recognize it as a joint letter having been addressed by Mr. Collyer to the gentlemen named, and forwarded to them.

By Mr. MacIntyre:

Q. And it was circulated in that form?

A. Forwarded to them in the form shown.

Mr. Leisure: Again, I assume that "circulated" means—

The Witness: Distributed, I should have said.

By Mr. MacIntyre:

Q. That was sent to them?

A. Sent to them.

Q. To the gentlemen named thereon?

A. Sent to the gentlemen named in that joint letter.

By Examiner Norwood:

Q. That was one of the original copies of that circular?

A. The letter was prepared in mimeographed form.

By Mr. MacIntyre:

Q. And this is one of the mimeographs?

A. This is one of the mimeographs supplied.

Q. Distributed?

A. Yes, sir.

7175 Q. Mr. Gottschalk, I now show you Commission's Exhibit 1043-4-Q and ask you if you recognize that

as a record of a telegram, a mimeographed record of a telegram, which was sent by Mr. Collyer, to the people named thereon under date of January 4th, 1932.

A. I recognize that as a mimeographed copy of a telegrom to the gentlemen named in that telegram of January 4th.

Examiner Norwood: Off the record.

(Discussion off the record.)

By Mr. MacIntyre:

Q. Mr. Gottschalk, I now show you Commission's Exhibit 1043-4-R, and ask you if that is a telegram of which 1043-4-Q is a mimeographed copy?

A. The telegram to Mr. Day, 1043-4-R agrees with the telegram of which the confirmation was mimeographed, and is designated as 1043-4-Q.

Q. Do you recognize it as an original telegram of which 1043-4-Q is a mimeographed copy?

A. I recognize 1043-4-Q as a mimeographed confirmation of a telegram sent by Mr. Collyer. A comparison discloses that the language is identical—

Examiner Norwood: With that?

7176 A. —with that.

By Mr. MacIntyre:

Q. It is in the form of an original telegram, isn't it? That is, 1043-4-R?

A. It is in the form of a telegram received by Mr. Day. The telegram as sent would be that which appears in the mimeographed confirmation.

Mr. MacIntyre: Will you mark that exhibit 1142 for identification?

(Paper marked.)

Mr. MacIntyre: I am noting for the record reference to Commission's Exhibit 1043-4-M as a copy of a document which has now been marked for identification as Commission's Exhibit 1142.

Examiner Norwood: Was it marked before?

Mr. MacIntyre: No, it has just been marked 1142.

7177 Q. I hand you document which has been marked for identification as Commission's Exhibit 1142, and ask you to state whether you recognize it as a letter received by your office from Mr. Nat Duke of the Delaware, Lackawanna & Western Railroad Company?

A. I recognize it as a letter having been received in our office and taken from our files.

By Mr. Leisure:

Q. Do you recognize the signature of the author of the letter? Have you ever seen him write his name?

A. That is not the personal signature of Mr. Duke, so far as I know.

7178 By Mr. MacIntyre:

Q. It is purported that he wrote it and you do testify that it was received?

Mr. Zimmerman: Excuse me—as I understand it the witness has said that all he knows about it is that he recognizes it as a letter that was in their files.

Mr. MacIntyre: Received, and in their files.

Mr. Zimmerman: No, he did not say that. He said a letter in their files.

The Witness: Received and in our files. It bears Mr. Duke's name, but I do not know that Mr. Duke personally wrote the letter.

Mr. Zimmerman: I see your point. He states, in other words, that it was received because it was found in their files. That is right, isn't it?

The Witness: It bears our receipt stamp and that is what leads to that conclusion.

Mr. Zimmerman: I see—it is a conclusion.

Mr. MacIntyre: We now offer that as Commission's Exhibit 1142.

By Examiner Norwood:

Q. Do you say that this is not Mr. Duke's signature?

A. I do not recognize it as Mr. Duke's signature.

7179 Q. Do you deny that it is?

A. I believe it is not Mr. Duke's signature.

Q. But this is the original?

A. This is the original.

7180 Mr. Leisure: I made all the objections that we have heretofore made to exhibits under 1043. Here is a letter between two railroad officials. There is no evidence in the record that any one of the respondents ever saw the letter or had anything to do with it. It is incompetent, irrelevant and immaterial.

Examiner Norwood: Well, we are considering this now—I am ruling on the question solely of whether or not it is

the original of the paper already received in evidence for reasons stated in the record.

Mr. Zimmerman: May I be permitted to make an objection for the record?

Examiner Norwood: Certainly.

Mr. Zimmerman: It appears that all this witness knows about this document is that it was found in his files.

Is that correct, Mr. Witness—and what you see on the face of the document itself?

The Witness: Right.

By Mr. Zimmerman:

Q. You do not recognize this as ever having seen it before?

7181 A. I undoubtedly saw it at the time—I won't say I undoubtedly saw it—it is probable that I saw it at the time it was received and passed it into the files.

Q. I am merely asking you if you have any recollection of having ever seen it before.

A. Not as a specific document.

Mr. Zimmerman: No.

By Examiner Norwood:

Q. Do you have any recollection of the transaction?

A. There are hundreds of letters that daily cross my desk—in response to inquiries as to whether people can attend meetings, and express their views at correspondence. It is impossible to say definitely as to a specific letter that it was or was not received. It may have been handled by somebody else in the office and placed in our files.

7184 By Mr. MacIntyre:

Q. Mr. Gottschalk, I now show you a document which has been marked for identification as Commission's Exhibit 1143, and ask you to state whether you can recognize that as a letter received and filed in your office from Mr. Nat Duke of the Delaware, Lackawanna & Western Railroad, under date of August 11, 1931.

Mr. Leisure: I take it that the question means, your Honor, whether or not this witness received the letter.

Mr. MacIntyre: I said, whether or not it was a letter received in his office. He was the secretary to the addressee.

A. I recognize it as a part of the file of correspondence

comprising responses to an inquiry made by Mr. Collyer on July 27th.

7185 Q. Do you recognize the signature on that, Mr. Gottschalk, the signature on that letter, as the signature of Mr. Nat Duke?

A. The signature appears to be the personal signature of Mr. Duke, but I have not seen Mr. Duke for a number of years, since his retirement. That will be subject to verification.

Mr. MacIntyre: We offer it as Commission's Exhibit 1143.

Mr. Leisure: May I ask the witness a question?

Examiner Norwood: Certainly.

By Mr. Leisure:

Q. When you say you recognize it, do you mean that you recognize it that it appears to be part of a file in your office?

A. Exactly. It was a letter which Mr. MacIntyre found in our files and which we gave him upon request.

Q. And you recognize it as the one you gave Mr. MacIntyre?

A. Yes.

Q. You think you read it at the time it was received?

A. Either immediately, or very shortly thereafter, in order to properly handle the matter.

Mr. Leisure: What is there in the letter, Mr. Gottschalk, that causes you to recall that you saw it?

7186 The Witness: The fact that it was in our files, the fact that it bore a stamp, that it was in response to an inquiry, and that unless we had this response the matter could not subsequently be handled.

Mr. Leisure. Your Honor, that brings up the point of my objection. Every answer the witness has given are statements of conclusions which should not be allowed to go in.

I object to the document being received in evidence. It is immaterial, incompetent and irrelevant.

Examiner Norwood: Is it 1143 that is offered?

Mr. MacIntyre: Yes.

Examiner Norwood: Is 1142 renewed?

Mr. MacIntyre: No. I voluntarily temporarily withdrew that.

Examiner Norwood: The objection is overruled, and

1143, which is the original document of a copy marked 1043-2M, is received in evidence.

We have already passed upon its relevancy and
7187 competency, and what we are doing now is merely receiving it as an original, pursuant to the instructions of the Commission.

(COM. EX. 1143 was offered and received in evidence.)

By Mr. MacIntyre:

Q. Calling attention to Commission's Exhibit 1043-2-I, and document which has been marked for identification as Commission's Exhibit 1144 as the original of which 1043-2-I is a copy, Mr. Gottschalk, I now show you exhibit 1144 and ask you to state whether or not you recognize that as a letter from Mr. J. H. Day, vice president of the Nickle Plate Railroad to Mr. Collyer, of your office, under date of August 3rd, 1931.

Mr. Leisure: I ask your Honor's instructions. I hesitate to make further objections, but I think the witness may be confused as to what the questions are intended to bring out.

I could take that letter and say "Yes, I recognize that as being a letter from So and So to So and So," but that would not make it competent to go into evidence.

7188 By Mr. MacIntyre:

Q. I ask you to state what the document marked for identification 1144 is, Mr. Gottschalk.

A. It is a letter from Mr. J. H. Day, of the Nickle Plate Railroad, dated August 3, and addressed to Mr. Collyer, which was taken by Mr. MacIntyre from our files. It was received in our office August 7, 1931, as indicated by the receipt stamp.

7189 Examiner Norwood: Can you identify the signature?

The Witness: I am not in position to say with certainty, but it closely resemble's Mr. Day's personal signature. Whether is it Mr. Day's personal signature or not, I am not prepared to state.

Examiner Norwood: That is the original?

The Witness: That is the original.

Mr. MacIntyre: I now offer in evidence the document which has been marked as Commission's Exhibit 1144.

Mr. Leisure: I make the same objections that we made heretofore, your Honor, to Exhibit 1043. In addition to

those objections I want to point out that this exhibit is what might be termed double-barreled hearsay, because in the first place the witneses knows nothing about the facts, and there are third parties here saying what someone else told them. So the document is not competent from any standpoint.

Examiner Norwood: Received as marked. Objection overruled.

(COM. EX. 1144 was offered and received in evidence.)

7191 JOHN DUFFY, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

I am vice president of the Lehigh Valley Railroad and have occupied that position for 9 years since December 1, 1929.

Q. With reference to a document which has been received as Commission's Exhibit 1043-3-K, I now call attention to document marked for identification as
7192 Commission's Exhibit 1145 as an original of 1043-3-K is a copy. Mr. Duffy, I show you document which has been marked for identification as Commission's Exhibit 1145 and ask you to state what you know about that. Do you recognize it?

A. I recognize it, yes.

Q. What is it?

A. It is a letter which I addressed to Mr. R. N. Collyer as chairman of the Traffic Executive Association, Eastern Territory, under date of September 3, 1931, referring to visits I made to certain gentlemen connected with the cement industry.

Q. That is your signature?

A. It is.

Mr. MacIntyre: I offer 1145 in evidence.

Mr. Zimmerman: While counsel are looking at it, I can state an objection to it without looking at the contents of it at all.

Examiner Norwood: I am sure counsel can.

Mr. Zimmerman: I am not interested in the contents of

it. I am interested, however, in whether counsel for the Commission claim that the contents of this was ever brought home to any respondent in such a manner that the respondent assented to it or approved of it, or had any part in it at all.

7193 Examiner Norwood: We have settled that point heretofore.

Mr. Zimmer: I am really asking if that is so, because if that is the evidence I would like to know it.

Mr. Wooden: It is in the evidence that the dealers, the railroads and the cement people—

Mr. Zimmerman (Interrupting) Some of them.

Mr. Wooden: Yes. Including the president of the Institute—worked together on this trucking matter.

Mr. Zimmerman: I see. But do you claim that there is any evidence which tends to show that this letter was ever brought home in any way to any of the respondents?

Mr. Wooden: Before it was written?

Mr. Zimmerman: Or afterwards.

Examiner Norwood: Let us do the rest of this off the record.

Mr. Zimmerman: I am not wasting my time in an idle discussion off the record, if the Examiner please.

Examiner Norwood: It is wasting your time if it is on the record, or off the record, because we have already discussed that and you have already discussed that before the Commission. I have ruled on it time and time

7194 again, and we have an understanding in regard to all this evidence that it must be connected with the respondents, and it must show that each respondent is connected here, with the record, before it is applied to that respondent.

Mr. Zimmerman: Thank you.

Examiner Norwood: That is the understanding, and it is enough to say that you have every exception on that.

Mr. Zimmerman: My objection is that this exhibit is purely hearsay and that it is incompetent, and therefore not admissible in evidence.

Examiner Norwood: Any further objections?

Mr. Leisure: May I ask the witness a question?

Examiner Norwood: Certainly.

Mr. Leisure: Mr. Duffy, I note from this exhibit that you wrote it on September 3rd, 1931, and it is on the letterhead of the Lehigh Valley Railroad Company, of which,

I think you said, you are vice president; and you wrote to Mr. R. N. Collyer. Who was Mr. R. N. Collyer?

The Witness: Mr. Collyer was the chairman of the Traffic Executives Association, Eastern Territory.

Mr. Leisure: And what other association, if any, did he have, please?

7195 The Witness: He was chairman of the Trunk Line Association.

Mr. Leisure: And except that did he have any other position? Was he connected in any official capacity with any railroad, do you know?

The Witness: No, sir.

Mr. Leisure: He was chairman of those two associations?

The Witness: That is right.

Mr. Leisure: I note in the third paragraph of the letter, Mr. Duffy, you say that "Mr. Smith of the Pennsylvania-Dixie Company manifested a sympathetic attitude towards the Building Supply Dealers."

Did you mean to imply by "sympathetic attitude," Mr. Duffy, that Mr. Smith entered into any conspiracy or any unlawful agreements with the Building Supply Dealers, to your knowledge?

The Witness: I certainly did not.

Mr. Leisure: You also state that "he felt that the best way to control the situation was the making of an arbitrary charge." Did you understand by that that Mr. Smith was attempting to represent the cement industry or that he was attempting to represent his own company?

The Witness: Certainly not the cement industry.

7196 And I was not even convinced that he represented the Pennsylvania-Dixie Cement Company. I was endeavoring to convince him that that was the thing he ought to do, so that we might get cement on the railroads, which was all I was interested in.

Mr. Leisure: And all that you intended to say in this letter was that he expressed a sympathetic attitude?

The Witness: Yes, that is just what I said.

Mr. Leisure: You also stated in this letter, in the same paragraph:

"There has been an agreement among the cement companies to make a charge of 15 cents a barrel."

Did you mean by that expression, when you used it, that the various cement had agreed by and between the com-

panies, to make this charge, or that certain companies had adopted it as company policy among themselves. What did you mean?

7197 Examiner Norwood: I think counsel should wait until the paper is received before he cross examines him on the contents of the letter.

Mr. Leisure: Your Honor, the exhibit is in evidence. This is 1043-3K.

Mr. MacIntyre: If your Honor please, this is 1145, which is not as yet in evidence.

Examiner Norwood: It is being offered now.

Mr. Zimmerman: Is it a copy of something that is in evidence?

Examiner Norwood: I shall rule on it, and then counsel may go ahead.

Mr. Leisure: I will follow either procedure, which ever your Honor prefers.

When the witness is on the stand, nothing can be more germane than asking what he meant when he wrote the letter.

Examiner Norwood: I thing counsel have stated fully their objections as to the propriety of 1145. The objections are overruled and it is received as marked.

(COM. EX. 1145 was offered and received in evidence.)

7198 Mr. Zimmerman: Are we going to get an answer to Mr. Leisure's last question?

Examiner Norwood: I sustained an objection of Mr. MacIntyre's to that.

By Mr. MacIntyre:

"Q. I now call attention to Commission's Exhibit 1043-3-L and a document marked for identification as
7199 Commission's Exhibit 1146—and also the fact that 1146 is the original of which 1043-3-L is a copy."

The witness identified Com. Ex. 1146 as the record, dated September 3, 1931, of a committee of three, of which he was one, addressed to Mr. Collyer as chairman of the Traffic Executives Association, Eastern Territory, reporting the result of a conference which the committee had had with Col. E. M. Young, president of the Lehigh Portland Cement Company, Allentown, Pa., regarding the use of railroads by cement companies. His signature is on the report.

7200 He recognized Mr. Stauffer's signature but the sig-

nature of Mr. Hamilton had been apparently signed by someone else.

Mr. MacIntyre: I now offer 1146 in evidence, your Honor.

Mr. Zimmerman: Without regard to the contents of the document I object to it as being inadmissible, as incompetent. There has been no showing which would make this document competent. It is contrary to the rules against admission of hearsay. The relevancy and materiality are not involved in that objection at all.

7201 Mr. Leisure: We make all of the objections we made to Exhibit 1043 with the same force and effect as if we restated them at this time, and we object to the exhibit as being incompetent, immaterial and irrelevant.

Examiner Norwood: The objection is overruled. Received as marked 1146.

(COM. EX. 1146 was offered and received in evidence.)

"Q. Reference is made to Commission's Exhibit 1043-4-L and also to document which has been marked as Commission's Exhibit 1147, the latter being the original of which 1043-4-L is a copy. I now show you documents marked Exhibit 1147 for identification and ask you to state what you know about that."

The witness identified Com. Ex. 1147 as a letter, dated December 22, 1931, signed by him and addressed to Mr. Collyer as chairman of the Traffic Executive Association, Eastern Territory, advising him that if a conference is held with cement shippers in Philadelphia on January 7th, "this" company will be represented.

Mr. MacIntyre: I offer the document in evidence, your Honor.

7202 (COM. EX. 1147 was offered and received in evidence.)

By Mr. MacIntyre:

Q. Mr. Duffy, I show you Commission's Exhibit 1043-3-M and ask you if that is a letter of which you received a copy from Mr. Hillary, vice president of the Reading Company, of Philadelphia, Pennsylvania, under date of September 4, 1931.

A. I don't know.

Q. Did you produce a paper that we requested you to bring to the hearing room this morning?

7203 A. I have a document—I haven't compared it, Mr. Examiner.

Examiner Norwood: I shall instruct the witness to produce it. This has the same effect as a subpoena duces tecum which it would take several days to get.

Mr. Burgess: That will be quite satisfactory.

By Mr. MacIntyre:

Q. If you please, will you compare 1043-3-M with the document which you have produced and about which we have just been talking, and state whether 1043-3-M is the letter which you received from Mr. Hillary.

A. Yes, it is.

7204 Q. It is?

A. It is a copy of it.

Q. Of a letter that you received from Mr. Hillary?

A. No, let us be specific—a copy of a letter addressed to Mr. Collyer.

Q. By Mr. Hillary?

A. I assume so—of which I received a copy.

Q. Of which you received a copy?

A. Yes. Is that clear enough?

Cross-Examination by Mr. Leisure.

Q. Mr. Duffy, again referring to your letter of September 3, 1931, addressed to Mr. Collyer, I note here that the letter reads in the third paragraph: "There has been an agreement among the cement companies to make a charge of fifteen cents a barrel in this connection." Will you explain to the Examiner what you meant when you wrote that there had been an agreement among the cement companies? Will you explain whether or not you meant—just explain what you did mean.

7207 A. There has been a great deal of discussion of our desire to get business on the railroads. I naturally did not know of any agreement and whatever I stated there undoubtedly was—well, an exaggeration as it is being applied here. What I was concerned with here was that we got the business on the railroads and I knew nothing of any agreement of any sort among the cement people. I was more interested in the agreement that they would ship by railroad.

By Examiner Norwood:

7208 Had they agreed with you?

A. No, sir, they had not.

Q. Then you just stated something that wasn't true?
A. That is—as I say, it was an exaggeration.

By Mr. Leisure:

Q. And did you mean to convey to Mr. Collyer that you had any personal knowledge, and, did you have any personal knowledge, on September 3, 1931, that any companies had agreed to anything among themselves about fifteen cents a barrel?

A. I had neither the knowledge nor did I intend to convey that information.

Q. Now, I notice in the next paragraph, Mr.
7209 Duffy, you state that Messrs. Hogan and Koch expressed an attitude similar to that of Mr. Smith. Did you mean to convey to Mr. Collyer in this letter on that day that Mr. Hogan's company or Mr. Koch's company had entered into any agreement either with you or with anyone else with respect to fifteen cents a barrel on cement?

A. I did not.

7210 Q. I notice in the last paragraph you used the phrase "general agreement that some charge should be made." What did you mean by that?

A. May I see that?

Q. Yes. Look at it, right in the third line in the last paragraph (handing paper).

A. I would say that that was probably the wish being father of the thought to a considerable degree. We were anxious to have each one of them agree to put this charge of fifteen cents a barrel on. We found some sympathetic attitude towards the railroads in the matter, but that was all I intended to imply.

Q. So following your last answer you want the Examiner to understand that when you were working on this proposition, and you found someone who had expressed a sympathetic attitude, that you may have described that to someone else as an agreement—they had a sympathetic attitude—or do you want the Examiner to understand, and did you intend to convey when you wrote it that
7211 you knew of some agreement between the cement companies to do this?

A. Answering your last question first, I know nothing of any such agreement. I have no knowledge of any such thing. And my whole effort, and my whole purpose in

writing that letter was to show that we were making some progress in endeavoring to prevail upon the several cement companies who were assigned to me—you understand, this was divided among a group of traffic executives—that among those that I called upon, I thought that we were making some progress in getting those individual companies to apply the fifteen cents a barrel charge which we desired.

Q. And you had no intention of implying that there was an agreement between the companies to do it?

A. Absolutely not.

Q. Or that they had entered into an agreement with you to do it?

A. No—no—I wish I had.

Mr. Leisure: That is all I have of Mr. Duffy. I would like to ask you one other question for the benefit of the Examiner in this hearing—

By Mr. Leisure:

Q. Did you know—quite apart from these exhibits—did you ever know of any agreement between the cement companies with respect to the matters described in that letter?

7212 A. I did not.

Redirect Examination by Mr. Wooden.

Q. I take it, Mr. Duffy, that you wrote these letters following your discussions and conferences with the various cement people that you referred to?

A. That is correct.

Q. And you were undertaking, I take it, to merely state the situation as you saw it at the time?

A. Right.

Q. You did not intend to exaggerate the situation, did you?

A. That is rather difficult to answer—I certainly did not intend to exaggerate the situation, but reading and seeing the implications thaat have been put into it, I realize that I did, because I never intended to convey any such impression.

Q. You used the word "agreement" just in the sense that a business man would use it, as distinguished from a lawyer's—

7213 A. You are not going to draw me into a discussion of what a lawyer might put into any word. I agreed with Mr. Burgess to come up here at eleven o'clock that morning. That is the way I apply it.

Q. You mean that is the way you applied it in your letter?

A. In what particular—

Q. In your letters—

A. In what particular—

Q. Do you mean in the same sense you just described it as coming up here this morning?

A. What particular reference do you mean, when you say I used it in the letter?

Examiner Norwood: When you used it in the letter.

The Witness: I want to see the letter to see what I said there. I am not—

(Letter handed to witness.)

The Witness: (Reading) "As you are aware, there has been an agreement among the cement companies to make a charge of fifteen cents a barrel in this connection, but I am told that all the companies have not strictly adhered to the agreement." My understanding was with the railroads, with individual companies, that we hoped to get fifteen cents a barrel put on this cement where it was loaded ino trucks—

7214 Q. Of course, you didn't state that in your letter. Is your recollection on the other as good now as you think it was at the time when you had the contemporaneous knowledge?

A. That is a pretty broad question, but I remember very well the whole case, and I would certainly say that there was never any intention on my part to imply that the cement companies had agreed among themselves, because I say on the face of it that they are not living up to it.

Q. Yes, I know you said that, but you said in connection with the agreement itself that they weren't living up to it. Didn't you know that the cement companies had quite generally put a fifteen cent charge on for loading cement on trucks?

A. I have no knowledge of their having it amongst themselves, but I do—

Q. I said, as a practice—

7215 Mr. Zimmerman: Let him finish.

A. (Continued) But I do know that there had been an understanding among the railroads that various cement companies were going to do it—the agreement by the railroads and the cement companies.

By Mr. Wooden:

Q. But each of the cement companies, you understood, agreed with the railroads, to put a fifteen cent charge on it?

A. Not each of them. I can't say as to that—but certain companies did.

Mr. Wooden: Nothing else.

Mr. Leisure: Just one question.

Recross Examination by Mr. Leisure.

Q. When you say "agreed with the railroads," will you explain to the Examiner fully, so there will be no confusion as to what you mean. Do you want the Examiner to go away with the impression that you sat down and had any kind of an agreement with any cement company, that you—

Examiner Norwood: I don't think we need go into that.

Mr. Leisure: That he would put the fifteen cents on—

A. I can't say of my own knowledge at the pres-
7216 ent time that we had any such agreement with anyone.

By Mr. Leisure:

Q. If one of them had not done it would you have felt that you had a right to sue him for damages?

A. Oh, no, not under any circumstances.

7217 JACOB GOTTSCHALK, previously duly sworn, resumed the stand and testified further as follows:

Direct Examination by Mr. MacIntyre (Continued)

"Q. Referring to Commission's Exhibit 1043-2-Z, and the document which has been marked for identification as Commission's Exhibit 1148, the latter being a document from which 1043-2-Z was copied, Mr. Gottschalk, I am showing you document which has been marked for identification as 1148, and I ask you to state what you know about that."

The witness identified Com. Ex. 1148 as a carbon copy of a letter on the letterhead of the Pennsylvania Railroad addressed to Mr. W. W. Campbell, bearing a stamp signature signed J. L. Eysmans, with a typewritten notation "Copy to R. N. C. Will you kindly arrange accordingly." Signed "J. L. E." It was a document which was on
7218 file in "our" office and bears "our" office stamp as of August 22, 1931. It is the carbon which was on "our" file bearing that receipt date stamp.

7220 "Q. Reference is made to Commission's Exhibits 1043-3-E and 3-F and to documents which have been marked for identification as Commission's Exhibits 1149-A, B and C, the latter three being the originals of which 1043-3-E and 3-F are copies."

The witness identified Com. Ex. 1149 A, B and C as a letter from Mr. Eysmans to Mr. Collyer, bearing "our" receipt stamp as of August 27, 1931, which was on "our" file. The signature apparently as that of Mr. Eysmans but it is a number of years since he has been in active service and the witness would prefer to compare it with other signatures before he says definitely that it is. It was a letter which was on "our" files and he has every reason to believe—well, he might say that it was received and on file in "our" office. That is an original
7221 letter.

7222 (COM. EX. 1149-A, B and C was offered and received in evidence.)

7224 By Mr. MacIntyre:

"Q. Reference is made to Commission's Exhibit 1043-3-J and a document which has been marked for identification as Commission's Exhibit 1150, the latter being the original of which 1043-3-J is a copy."

The witness identified Com. Ex. 1150 as a letter on the letterhead of the Pennsylvania Railroad, dated August 31st, addressed to Mr. Collyer as chairman of the Traffic Executive Association, Eastern Territory. It bears the name of Mr. Eysmans. The witness does not believe that it is his signature, in fact, the witness is sure that it is not his personal signature. It does not resemble it in the slightest.

Q. Does it appear to be a reply to any letter that you sent out?

Mr. Leisure: I object to what it appears to be. If the

witness did not write it, I object to it,—his guessing as to whether it is a reply or not.

Examiner Norwood: The objection is overruled.

The Witness: If I may see the letter of August 26th, to which this refers—it says "supplementing mine of the 26th instant," and it says that it relates to the same
7225 subject matter as the letter of August 26th.

Examiner Norwood: Do you have that letter?

The Witness: It supplements that letter, which was just under consideration.

By Mr. MacIntyre:

Q. Do you recognize it as such, as a letter supplementing one which has been received in evidence as Commission's Exhibit 1141-B and C?

Mr. Leisure: If it does supplement it, nothing on earth that this witness says can help it. If it does not—

Examiner Norwood: (Interrupting) He asks if he recognizes it as such; and this is bearing on his identification of other papers: matter of fact.

The Witness: But the witness is attempting to read it and characterize it and determining now whether it bears on it. I submit that is improper.

Examiner Norwood: Objection overruled.

By Mr. MacIntyre:

Q. I show you Commission's Exhibits 1043-3-A and ask you if you consider or recognize 1150 as a reply to 1043-3-A?

Mr. Leisure: Again, your Honor, the document speaks for itself, and I object to the witness characterizing the document, unless he wrote it.

7226 Examiner Norwood: Objection overruled.

A. This joint letter of August 25th, 1931, was written by Mr. Collyer personally and—

7227 The Witness: I would not necessarily say that these two letters from Mr. Eyesmans were a response to the letter of August 25th.

By Mr. MacIntyre:

Q. Would you say that they are in part in response to a letter of yours and Mr. Collyer's under date of July 27, 1931, which has been received in evidence as 1043-2-E and 2-F, concerning the meeting of July 22, 1931?

Mr. Leisure: I object to the question unless it first ap-

pears that the witness had something to do with writing the letters. For him to read them and draw his conclusions as to whether or not they are replies to other documents, is not a proper procedure, I submit.

Mr. MacIntyre: The witness testified this morning to the fact that he aided in the preparation and prepared the two letters I have just mentioned as received in evidence, 1043-3-A and 1043-2-E and 2-F.

7228 Examiner Norwood: Answer the question.

The Witness: The preparation of these circular letters, the mechanics of it were very largely handled through my end of the office. Now, the language of this letter of August 25th—that is, 1043-3-A—leads me to believe that Mr. Collyer personally dictated it, because of the nature of its language.

The letter of July 27th calls for advices which were received from various members who were addressed in that letter of July 27th. Those would come, in the ordinary course of business of our office, those responses would come across my desk, and in a matter of this importance would probably have been handled by Mr. Collyer personally. As to the specific communication, after a lapse of almost seven years it is difficult for me to answer whether I personally handled them or whether he handled them.

Q. You were acquainted with the transactions which were involved?

A. The letters had been addressed to our members and responses had been called for.

Q Some of which were prepared by you?

A. Yes.

Q. Now, as to 1149-A, B and C, would you say that that is in response to either of your letters July 27, 1931
7229 or August 25, 1931?

A. Speaking from the letters themselves, I should say they were in response to the letter of July 27, 1931.

Q. Do you recall the transaction—what would be your answer—and your connection with the transaction?

A. In the handling of our business in the ordinary way, I should say that they were responses and we did so regard them.

Mr. MacIntyre: I now offer for the record the document which has been identified as 1150.

Mr. Leisure: We make all the objections that we have heretofore made, under Exhibit 1043 to this exhibit, your

Honor. It is between two railroad officials, neither of them is on the stand, we are deprived of the right of cross examination. Mr. Eysmans was on the stand. He could have been asked questions. It is not shown so far that the witness on the stand participated in this transaction, and I object to it as incompetent, irrelevant and immaterial.

Mr. MacIntyre: The witness has testified that he did participate in this transaction and prepared some of the letters to which these are replies, or aided in the preparation of letters to which these are replies.

Mr. Zimmerman: I have an objection on behalf of Marquette, that the exhibit is not competent at all.

7230 Examiner Norwood: Objection overruled.

(COM. EX. 1150 was offered and received in evidence.)

7231 Q. Reference is made to Commission's Exhibits 1043-3-M and to the document which has been marked for identification as Commission's Exhibit 1151, the latter being the original of which 1043-3-M is a copy? Mr. Gottschalk, I now show you document which has been marked for identification as Commission's Exhibit 1151 and ask you to state what you know about it.

The witness identified Com. Ex. 1151 as a letter addressed on September 4 by Mr. E. D. Hilleary, vice-president of the Reading Company, to Mr. Collyer, chairman of the Traffic Executive Association.

Mr. MacIntyre: I offer that in evidence.

Mr. Leisure: I make the same objection to this

7232 exhibit, your Honor. Here is a witness who cannot be cross-examined on this document, and it is being offered in evidence for the purpose of binding the respondents in this case. I object to the procedure and I object to the document itself as being incompetent, irrelevant and immaterial.

Examiner Norwood: The objection is overruled, and the exhibit is received as marked.

(COM. EX. 1151 was offered and received in evidence.)

7236 Q. Do you recognize the signature at the end of the document as that of Mr. C. J. Brister?

7237 A. It is not his personal signature, no, sir. It is another instance of a letter received and in our files at the time of the examination of such files made by you.

Q. Do you recognize any receipt stamps or handwriting on the letter?

A. The stamp indicates that it was received in our office on September 24th, 1931.

Q. Is that your office stamp—receipt stamp (indicating) on it?

A. It is our office stamp.

By Examiner Norwood:

Q. That is the original, is it?

A. That is the original.

By Mr. MacIntyre:

Q. Do you recognize the signature at the end of the letter?

A. While Mr. Brister's name appears, it is not his personal signature.

Q. You say it is not his personal signature.

Do you mean to state that you do not recognize it as such?

A. It doesn't resemble it in the slightest degree.

7239 Q. Mr. Gottschalk, I am now showing you a document which has been previously marked for identification as Commission's Exhibit 1142, and I ask you to state what you know about that.

A. As in the case of previous communications, it is a letter which bears our stamp, appears to have been received in our files, and was on the files when you made your examination of the files.

Q. Is that the receipt stamp of your office that is on it?

A. The receipt stamp of our office, December 21, 1931.

Q. What about the signature of the letter?

A. It is not the signature of Mr. Duke.

Q. Does it appear to be that of Mr. Warburton who at that time was his secretary?

R. I cannot say whether that was Mr. Warburton or Mr. Wallace. I do not recognize the signature.

Q. Who is Mr. Wallace?

A. He was assistant general freight agent. He is retired now. As I say, I do not recognize the signature. I do not know whose it was.

Q. You knew Mr. Warburton as secretary of Mr. Nat Duke at the time?

A. I do not know as Mr. Warburton was with the
7240 Lackawanna at the time. I cannot place Mr. Warburton as having been associated with the Lackawanna in 1931.

Q. But he was with them as secretary to Mr. Nat Duke?

A. I wouldn't say that he was there as secretary. I knew he was in the Lackawanna freight department; in what capacity, I don't know. It is my distinct impression that he left th Lackawanna before 1931, but I am not certain.

Mr. MacIntyre: Your Honor, we offer at this time, that is, we renew our offer, of 1142, which was withdrawn this morning.

Examiner Norwood: That 1142, is that an original letter?

The Witness: It is an original letter.

Mr. Leisure: I make the same objections that we heretofore made under Exhibit 1043, your Honor. Here is the letter that purports to bear the name of Mr. Nat Duke, but the testimony of the witness shows that it is not his signature; so we have a letter being offered from nobody knows whom. I suppose it is being offered on the theory that something the author of the letter says is binding on us, otherwise it would be immaterial. I submit it should not be received in evidence. It is incompetent, immaterial and irrelevant.

7241 Mr. Zimmerman: I will repeat the objection heretofore made as to the several other exhibits on the same subject matter.

So far as respondent Marquette is concerned, there is no showing whatsoever of any connection with the matter, and the exhibit is incompetent. There has been no proper foundation laid which would make it competent.

Examiner Norwood: Objection overruled.

(COM. EX. 1142 was offered and received in evidence.)

"Q. Reference is made to Commission's Exhibit 1043-4-P, and a document which has been marked for identification as Commission's Exhibit 1155, the latter of which is the original of the former, that is, the oirginal of 1043-4-P. Mr. Gottschalk, I now show you document which has been marked for identification as Commission's Exhibit 1155, and ask you to state what you know about that."

The witness identified Com. Ex. 1155 as a (document)

bearing "our" office stamp as having been received on January 2, 1932, and was in "our" file at the time you (The Federal Trade Commission) made the exam-
7242 ination of the file. The official stamp such as is placed on it in the ordinary course of correspondence. It is an original.

7244 "Q. Reference is now made to Commission's Exhibit 1043-4N and the document which had been marked for identification as Commission's Exhibit 1154, the latter being the original of which 1043-4N is a copy. I now show you, Mr. Gottschalk, the document marked for identification as 1154 and ask you to state what you know about that."

The witness identified Com. Ex. 1154 as a letter bearing the receipt stamp of his office, date December 26, 1931 which in the regular course of business was in his file; it was the custom of the office to so stamp letters received in the due course of business; the signature on the letter resembled Mr. Vernia's signature, but he would have to have other letters in order to say absolutely whether it was his signature.

Mr. MacIntyre: I offer the document in evidence.

Examiner Norwood: Is that an original, Mr. Gottschalk?

The Witness: It is an original.

Mr. Leisure: We make the same objection as heretofore made, your Honor.

Mr. Zimmerman: I do not see that this exhibit is
7245 any better than any of the rest of them. The same objections will be made on behalf of the Marquette as to those heretofore made on the same subject matter.

Examiner Norwood: Objection overruled.

(COM. EX. 1154 was offered and received in evidence.)

7246 Mr. Leisure: Yes.

As to cross examination, your Honor, there is nothing to cross examine this witness on. He did not write any of these letters and knows nothing about the contents of these letters of his own personal knowledge.

Cross Examination by Mr. Leisure.

Q. Is that correct, Mr. Gottschalk?

A. Those letters that were written bearing Mr. Collyer's name were, in the major portion, dictated by him. I
7247 attended to the mechanical preparation and transmission. I may have collaborated sometimes in the question of language and statement of facts, and things of that sort, but the responsibility was entirely his.

Q. Yuo did not formulate any of the ideas that were put in them?

A. The policy was determined by him as chairman of the Association.

Q. And as to letter written to Mr. Collyer, you necessarily did not write any of those or know anything about them?

A. They were written by the parties responsible for them.

Redirect Examination by Mr. MacIntyre.

Q. Mr. Gottschalk, you do recognize some of the letters that were written to Mr. Collyer as being in response to those that you prepared for Mr. Collyer or aided him in their preparation.

A. Well, in the ordinary handling of the correspondence in our office, they would not appear in our files unless they had been evoked by a letter which had been written. That is a reasonable assumption in the conduct of our business.

Q. I believe you have already testified that Mr. Collyer has been dead a number of years?

A. Yes. Since 1932.

7249 Mr. MacIntyre: If you Honor please, I would like to call atention to the statements made at line 24, page 7186 of the record. Reference is there made to a document being marked Exhibit 1042-2-A. At the time of the discussion there was no such document being discussed. I think that during the afternoon we ought to make an effort to find out what document was referred to and make such correction as may be necessary.

Examiner Norwood: Off the record.

(Discussion off the record.)

Examiner Norwood: Let line 24 on page 7186 read "1043-2-M."

J. H. ACKERMAN, resumes the stand and testifies further as follows:

Direct Examination by Mr. Wooden.

Q. Mr. Ackerman, I am showing you Exhibit 272-C for identification, and call your attention to the pencil initials in the upper left hand corner. Are those your initials?

A. My initials are J. H. A. Did I write those there, do you mean?

7250 Q. That is my next question, yes. Are those initials in your handwriting?

A. No, sir.

Q. Do you know whose handwriting it is?

A. I think it is the same gentleman whose handwriting is down below.

Q. Your employee?

A. Yes, sir.

Q. Based on your knowledge of the business of your company, can you say whether Exhibit 272-C for identification represents approximately the market area in which your two mills did business?

A. I would say it represented it approximately, yes, sir.

Mr. Wooden: Your Honor, then I will renew the offer of this Exhibit, which was offered first yesterday.

Examiner Norwood: Read the question and answer.

(Last question and answer is read by the reporter.)

Mr. Leisure: Your Honor, there are other things—

By Examiner Norwood:

Q. At what time—at approximately what time?

A. I understood him to say in the question, "approximately the market area in which you did business."

Q. Yes.

Mr. Wooden: That is right.

7251 A. Well, I—

Mr. Wooden: You can fix the time.

The Witness: 1933 or 1934—1935.

By Mr. Wooden:

Q. 1936?

A. Possibly.

Mr. Leisure: Has it been offered?
Examiner Norwood: Yes.
Mr. Leisure: May I ask the witness a question?
Examiner Norwood: Certainly.

By Mr. Leisure:

Q. Take the line that is green, going into yellow,—would that line remain constant during any one year or two years?

A. No, sir.

By Mr. Wooden:

Q. Would it vary, according to changes in freight rates?

A. Yes, sir.

Q. Any other factors that would cause a variation?

A. Well, now—this is the work of art of one of our employees. He has indicated on it what it says—the yellow portion was the Thomaston market area and the green, if that is green, the Northampton market area.

Q. Would you say that in the Thomaston market
7252 area shown on the map, that represents the area in which the freight from your Thomaston mill is less than the freight from your Northampton mill?

A. I think that is what it was intended to show.

7253 (COM. EX. 272-C was offered and received in evidence.)

7254 (COM. EX. 267-B and 268-F were offered and received in evidence.)

The witness identified Com. Ex. 1156 A as a photostatic copy of a letter written by him October 2, 1935, bear-
7255 ing his signature; Com. Ex. 268 A and B as a photostatic copy of a letter addressed to the witness' company to his attention from Captain Leehey in response to Com. Ex. 1156-A.

7256 Mr. Wooden: I now offer in evidence 268-A and 268-B.

7257 (COM. EX. 1156-A and 268-A and B were offered and received in evidence.)

Q. I show you now exhibit marked 1156-B and C for identification. Is that a copy of an original letter written by you and bearing your signature?

A. What is that number up here? 1156?

Q. 1156-B and C.

A. All right. 1156-B and C is a photostatic copy of a

letter dated October 23rd, 1935, addressed to the War Department, Eastport, Maine, signed by me. However, I note there are apparently some longhand notes on there that I don't know anything about.

Q. Is 1156-B and C your reply to 268-A and B?

A. Apparently, yes, sir.

Mr. Wooden: I offer 1156-B and C in evidence.

7259 (COM. EX. 1156-B and C was offered and received in evidence.)

7260 Q. You were undertaking in this letter, were you not, Mr. Ackerman, to state the reasons why you could not make an f. o. b. mill price as requested by Captain Leehey in 268-A and B?

A. May I see the letter?

Q. Yes (handing 268-A and 268-B to the witness).

A. May I have the question again, please.

Q. (The questilon is repeated by the reporter.)

A. I was attempting to explain to Captain Leehey why we did not quote the price f. o. b. our mill on an invitation that we had received, and also attempting to make an appointment to go up and see him and discuss the matter with him.

Q. Did you consider the request that he had made for an f. o. b. mill price as a request which was not unreasonable or undesirable in, and of itself, which language you used in your letter?

7261 The Witness: I did not consider that it was an unreasonable request.

7262 New York, N. Y.,
Friday, May 27, 1938.

7263 Mr. Leisure: Your Honor, before we start this morning, there is another exhibit that I would like to get correctly stated on the record.

On page 7015, Exhibit 913-1A. is offered, and on page 7062 the same exhibit is referred to and is offered and received as 913-2A. There is another exhibit by the number of 913-2A, so that those two numbers will have to be corrected.

Examiner Norwood: Were both of those taken yesterday?

Mr. Leisure: Yes.

Examiner Norwood: Off the record.

(Discussion off the record.)

Examiner Norwood: Let the record show that the exhibit received as shown on page 7062, line 5, designated there as 913-2A, should be designated as 913-1A, as shown in the offer of this exhibit on record page 7015.

Mr. Leisure: That is correct. And it is also re-
7264 ferred to in line 22 of the same page, 7062.

Examiner Norwood: Yes.

Mr. Leisure: And the change should also be made on the face of the exhibit. Instead of 2A it should be 1A.

Examiner Norwood: The reporter will correct it accordingly.

J. H. ACKERMAN, previously duly sworn, resumed the stand and testified further as follows:

Direct Examination (Continued) by Mr. Wooden.

Q. Mr. Ackerman, referring to your letter which is in evidence as Exhibit No. 1156 B and C, you referred to the question of destination prices versus mill prices, and then said that every manufacturer who had carefully studied that question had reached the inevitable conclusion that mill prices will result in a complete disorganization, consternation and chaos in the marketing of our products. What disorganization did you have reference to?

A. May I see the letter, please?

Q. Yes (handing paper to the witness).

A. Mr. Wooden, my recollection of this letter is that it was in reply to a letter that was addressed to me by Captain Leehey of the United States Army Engineers. I
7265 think he raised certain questions.

Q. Asking you the quota for the mill?

A. No, I do not think that is quite right. However, we did receive an inquiry from another department, I believe, up at Eastport, asking us to name him price f. o. b. mill, I do not think it came from Captain Leehey.

Q. Look at Exhibits 268-A and B, isn't that asking that you quote f. o. b. mill?

A. It is a technical point, as I see it. We did not receive, as I recall, an inquiry from Captain Leehey. I do not think he was the purchasing officer. However, he refers in his letters "on our next proposals."

Q. Your Exhibit 1156 B and C is in reply to that letter?

A. Yes, sir, I would say that it was.

Q. With that background, and setting, will you answer my previous question as to what part of this disorganization you referred to, when you said it would result in complete disorganization?

A. It seems to me, as I recall all this, that here was a golden opportunity to present to a branch of the Government some facts concerning the nature of our business. And I took occasion to express our opinion.

Q. Is that the only answer you can make regarding your use of the word "disorganization"?

7266 A. I would not say that was the only answer I can make, sir, no. I probably had in mind, I may have had in mind, our experience when we were selling f. o. b. the mill.

Q. What was that experience?

A. It was a very unsatisfactory one, as far as we were concerned.

Q. In what way?

A. I am referring now to the time that we were loading cement on trucks.

Q. In other words, letting the buyer take the cement away in trucks and charging him only, what price? What price would you charge him?

A. I do not recall what price we charged him, but the whole proposition, it seems to me, sums itself up into this. I look upon our company as a wholesales of cement, not a retailer. We depend on our dealers as our retailers. We were in constant controversy and argument for various reasons with our customers, and I learned early in my selling experience that when you get into a controversy with your customer, you usually win the argument but lose the customer.

Q. You are referring now to your trucking experience?

A. Yes.

Q. That goes back to what time?

A. A good many years ago. I cannot tell you the exact dates.

7267 Q. About 1930 or 1931?

A. I should say along there, yes, sir, I really do not remember.

Q. Did you then f. o. b. mill or for rail delivery?

A. No, sir.

Q. Only for truck delivery?

A. That is right.

Q. Did you then charge the customer who came to the mill for delivery in trucks, did you charge him according to the delivered price, figured on a rail basis?

A. I do not recall what our delivered price to the truck was.

7268 Q. You did not sell it at the time in car lots f. o. b. mill for delivery on cars?

A. No, sir; we did not.

Q. Did your experience in selling for delivery in trucks result in inability to know what the delivered price was of given places?

A. Why, that naturally followed. That is, it naturally —if I understand your question—it naturally followed. I don't know what the other man figured as his cost when he came with his truck and carted it away.

Q. Well—A

A. (Interrupting) Let me explain this, please.

Q. Go ahead.

A. This mill is up in Maine. Maine is essentially an agricultural State. Our experience showed that truckers on potatoes from Arista County came by the mill from Searsport, maybe as far as Boston. We found those trucks returning empty. They stopped at the mill for a load of cement on an order of some dealer. We found cases where cement was peddled along the road, in some cases, under the nose of our own customer.

Q. At cut prices?

A. Wait a minute. Let me finish. We received complaints from our own dealer as to why it was he had received no protection from us. He was a customer of

7269 ours; why was somebody else in that town selling cement in his area?

Q. And at lower prices?

A. Well, no doubt that is what caused him to complain. Now he simply said to us, "Control that situation as far as I am concerned, or I won't buy any more of your cement."

Q. He had other sources of supply in Maine, as from the Hudson Valley, that he could buy from?

A. We have planty of competition in Maine.

Q. Was the same situation true at that time at your Lehigh Valley mill?

A. Substantially, yes.

Q. Were other mills in the Lehigh Valley also engaged in trucking?

A. I believe so; some of them.

Q. Did that whole situation as to the trucking there, in your opinion, tend to break down the delivered prices that were calculated on a rail basis?

A. Not necessarily. It was not a question, as I view it, of breaking down the delivered prices. It was a question of doing what your best customers asked you to do, the people that you depend on for your business.

Q. Didn't your best customers put pressure on you to lower your prices so that they could compete with that trucking competition?

A. In most cases they may have, but I think
7270 we were losing enough money as it was.

Q. It made it a little difficult to stand up against such requests, didn't it?

A. I don't understand what you mean by "made it a little difficult."

Q. I mean the requests of some of your important dealers—

A. (Interrupting) The requests to what?

Q. That you lower your price by rail delivery sufficient to enable them to meet the truck competition.

A. Well, Mr. Wooden—

The Witness: It seems to me, if I understand your question correctly, that you are in between the
7271 horns of a dilemma.

Mr. Wooden: I am trying to ask if that was not one of the horns of the dilemma.

Examiner Norwood: State the complete dilemma.

The Witness: May I have your question again?

(The question is repeated by the reporter.)

The Witness: Well, it makes it a little bit difficult.

Q. Some dealers were not in a position to take delivery by truck, were they?

A. When we were trucking, we permitted any of our customers that we were willing to sell the privilege of coming to the plant and getting the cement, or of sending a truck that they hired, to get it.

Q. But there were some dealers that were not in a position to take advantage of trucking, while others were?

7272 The Witness: Well, I still think that they had the opportunity or privilege of getting to the mill if they decided to exercise that privilege.

By Mr. Wooden:

Q. I have not questioned that; my question was whether some dealers were not in a position to make use of trucking while others were.

A. They may have been.

Q. Don't you know, as a matter of fact, that that was your experience?

A. The dealers, at greater distances, apparently preferred rail delivery to truck delivery.

Q. Did you have situations where the dealers who took delivery by truck, got over into the territory of other dealers, at a distance, who took delivery by rail?

A. That may have happened.

7273 Examiner Norwood: Was not that the cause of complaints to you?

The Witness: That may have been one of them, but that was not, in my opinion, the principal cause of the complaints.

Examiner Norwood: What were the other causes?

The Witness: Well, your Honor, take a typical example. Half a dozen or a dozen trucks might arrive at your plant at one and same hour. Each trucker felt that he should be given attention immediately. The sixth or the twelfth trucker probably had to wait an hour or two hours, and by the time he returned his boss wanted to know where he had been and what was all the delay. They had a lot of trucks up at the Lawrence plant.

By Mr. Wooden:

Q. That is another angle of it.

A. That is one of the angles; his Honor asked me about it. We had cases of sudden thunder storm. Half of the contents of the truck maybe were soaked, and the question was, whose property was it, was if ours or was it the customer's. If we had loaded it on time they would not have gotten wet. We had cases where trucks broke down. We had cases where truck drivers stole the material, and we were in, as I said before, controversies with our cus-

7274 tomers, and from a sales standpoint, in my experience, that is bad business. Does that answer your question, sir?

By Mr. Wooden:

Q. Why didn't you let such of your customers as wanted the trucking make use of the trucks, while those who did not care for it, have it their own way?

A. It was a case of the tail wagging the dog.

Q. You mean there were more that wanted it by rail than by trucks?

A. Absolutely.

Q. Were they in general the more influential or larger dealers that wanted the rail delivery?

A. I would simply sum it up by saying that a great majority of our trade preferred rail delivery to truck delivery.

Q. Was that primarily noticeable among your large dealer customers?

A. Not necessarily.

Q. Did you at one time impose a fifteen cents per barrel charge for delivery on the trucks?

A. I believe so.

Q. At both your mills?

A. Yes, sir, to my recollection.

Q. How long did that charge remain in effect?

A. I do not remember.

Q. Was it a matter of some months or a year or two?

7275 A. I would say it was a year or two.

Q. Did you then go further and completely discontinue the delivery of cement to cement trucks?

A. We have discontinued it entirely at both plants.

Q. When did you make that change?

A. I think it was in 1932.

Q. Can you fix the date?

A. I really don't know. I am guessing when I say it is 1932. That is my recollection.

Q. Did you send out notices to your trade of such discontinuance?

A. Yes, sir, from my recollection of it.

Q. Would you say that it was the early part of 1932?

A. I don't remember.

Q. Did other mills with which you were in competition impose a fifteen-cent differential charge for loading the trucks?

A. I think so, some of them did.

Q. At the same time you did?

A. That I would want to say definitely. I really don't know. There are a lot of mills in this country.

7276 Q. I do not mean to speak for the whole country. I asked for mills that you are in competition with.

A. I think some of them did.

Q. Unless all did, wouldn't it continue?

A. I would not truck cement again for anybody, if they all do.

Q. Did the other mills discontinue loading the trucks entirely at the same time you did?

A. I would think so. I imagine their experience was probably similar to ours.

Q. Did you discuss with any of your competitors, these competitive mills, this trucking problem?

A. We may have.

Q. Didn't you know at the time you put your fifteen cent differential on, that others were doing likewise?

A. My recollection is that we no doubt picked up quotations to the effect that that was a policy inaugurated by another company, and it sounded good to us and we adopted it.

Q. Not only by one other company, but by a number?

A. I really do not remember.

Q. Didn't you know at the time you discontinued loading to trucks entirely that your competitors were doing likewise?

A. No, sir.

7277 Q. There was not any announcement of that sort?

A. Any announcement?

Q. Of complete discontinuance?

A. There may have been. There may have been, I did not quite understand your question.

Q. To come back to this f. o. b. mill price, can you tell me whether or not, when you loaded for delivery to trucks, that you charged the customers a price delivered to the place he wanted to take it, figured on a rail basis?

A. When?

Q. At the time you were loading the trucks?

A. Well, loading to trucks was a sort of a growth.

Q. Was there one time that you did it?

A. Did what?

Q. Charged the customer who took delivery at the mill in trucks the delivered prices at the destination, figured by rail?

A. I think there was, with a trucking allowance.

Q. What does experience in delivery to trucks have to do with your refusal to sell the Government f. o. b. mill for delivery by rail?

7278 Examiner Norwood: Did you refuse to sell the Government f. o. b. mill?

By Mr. Wooden:

Q. For delivery by rail?

The Witness: Well, now, I would not want to answer that question yes or no, for this reason, that on that Eastport job, as I recall it, there was established for the benefit of the Government, a special freight rate, and it is my recollection that when the Government uses a Goverment bill of lading, title to the Government follows at point of origin. Now, I am not a real expert, and I may be a little bit over my head.

Q. All the more, then, I ask the question why you were not willing to sell the Government f. o. b. mill where it took title?

A. Well, I think we were really giving the Government what they wanted.

Mr. Leisure: I think that is a legal question, if the Government took title at the mill. It is a legal question, and this witness should not be asked about that.

Mr. Wooden: I am asking him why in the course of his business he did what he did.

Mr. Leisure: They did take title.

7279 Mr. Wooden: That is conceded, I think.

Examiner Norwood: Objection overruled.

(The last question was read by the reporter.)

A. I thought it was just acknowledged that they did talke title at the mill. Therefore we sold them theoretically, at the mill.

By Mr. Wooden:

Q. Actually, however, you quoted them a price delivered, didn't you?

A. That is what the Government is interested in, in my opinion.

Q. Didn't they want the f. o. b. mill price?

A. I do not know what they asked for, I do not remember what they asked for.

Q. Well, we have here the letter showing what they asked for, from Captain Leehey, to which your Exhibit 1156-B and C is a reply. The question is, why didn't you give them what they asked for.

Examiner Norwood: Let the witness refresh his memory from those exhibits.

By Mr. Wooden:

Q. Here is your letter, in reply to Captain Leehey's letter, which is 268-A and B (handing papers to witness).

A. I think it is answered right here, when I said it is inconsistent with our way of doing business.

7280 Q. And was it not answered right there, when you said it creates complete disorganization and consternation and chaos in the marketing of your product?

A. Well, ninety-nine per cent of our buyers want to know what cement is going to cost them at point of use.

Q. And here is one that did not?

A. It does, though.

Mr. Zimmerman: What is your statement based upon when you say "Here is one that did not?" Did you ever know of a Government Procurement Officer that did not want to know the cost at the point of use?

Mr. Leisure: Mr. Wooden is not stating the record correctly when he says they asked for f. o. b. mill.

Examiner Norwood: I think that counsel may refrain from further statements. We are trying to get statements from the witness, and I do not think he needs any suggestions.

Mr. Leisure: But when the record is incorrectly stated that the Government asked f. o. b. mill, when the letter that they are discussing, says on the first page, "However, of all our bids received, only one bidder quoted us a mill price, the other prices being identical and quoted for delivery at Eastport. This one bidder who quoted a

7281 mill price did not develop to be the low bidder when the cost of freight is added to his mill price, so as to compare his bid with the other bids, on the basis of f. o. b. Eastport," clearly indicating that they were calling for destination prices.

Mr. Wooden: I will concede any number of times that every buyer wants to know the delivered cost where he is going to use it.

7282 Q. Mr. Ackerman, do you not believe that a customer is entitled to buy f. o. b. mill if thereby he can get a lower delivered cost to him at the place he wants it from one mill than from another?

A. I might be willing to answer that question "yes", but I also have myself to consider, Mr. Wooden. I want to be in a position to compete, don't I? I am trying to sell cement. I want to have an opportunity to get that business and be in a position to compete.

Q. Are you willing to take it at less than your com-

petitors on a delivered basis? Is that what you mean by competition or do you want to make your price the same?

A. I announced here earlier on this examination that we had a one-price policy. Bear that in mind. We do not make special prices, and I do not think we ever will. Now, if we start making a special price one place, that means in our language that everybody gets that price.

Q. That is not my question.

A. That is in my mind.

Examiner Norwood: Read that previous question.

(The question was read by the reporter.)

7283 Q. To sell f. o. b. mill might frequently result in your customer getting his cement at a lower delivered cost to him laid down where he wants to use it—he can get a lower delivered cost from one mill than from another.

A. How?

Q. Because of the less freight that he may have to pay from one mill than from another.

A. You are supposing something else, are you not? you have got several variables in there, as I see it.

Q. Sure. When the particular mill that makes the sale where the freight is decreased, the net realization on that mill goes up correspondingly, doesn't it?

A. That is sum and substance of what we do every day we do business.

Q. In other words, you are realizing different mill nets all the time from your different customers, depending upon where they are located?

A. That is true. I wish they were all right by the mill.

Q. That is where your highest net realization is, is it?

A. It is likely to be.

Q. Do you remember your interview with Mr. Widman in 1936?

A. I remember that Mr. Widman came in to see me in 1936.

7284 Q. Did you say to him in substance that you were unwilling to quote an f. o. b. mill price as requested by the War Department on the Quoddy project, because to do so would give your company an advantage over competitors?

A. I don't believe so.

Q. It would have given your company over in Maine an advantage over the competitors if you quoted f. o. b. mill, wouldn't it?

A. It depends what price we named f. o. b. the mill. Remember, these people were talking about millions of barrels of cement, and buying a few barrels. I told them when I went up there to see them if they wanted to buy five or six million barrels of cement we would talk turkey with them.

Q. Did you say in substance to Mr. Widman that if
7285 you were to quote f. o. b. the mill that competitors would unquestionably take advantage of your company under similar circumstances?

A. I may have said something along that line. I don't remember whether I said exactly that or not.

Q. That, in substance?

A. My experience has shown me that my competitors are just as hungry for business as I am.

Q. Did you say to Mr. Widman that that situation would result in a cut-throat competition situation?

A. I don't recall it.

Q. I am asking you now whether you think it would so result.

A. Why, I don't recall the first part of your question. Whether what would result?

Q. Quoting f. o. b. mill, then having your competitor go you one better, and so on?

A. Well, if your competitor goes you one better you are going down the ladder.

Q. Did you say in substance to Mr. Widman that you had been through some price wars in the past of that sort?

A. I may have said that. We have been through price wars.

Q. Based on that, or resulting from that kind of a policy of quoting f. o. b. mill?

7286 A. I don't think as a result of quoting f. o. b. mill.—with the exception of the trucking experience, our experience does not go back far enough in the industry to say whether or not they ever did.

7287 Q. Isn't that in line with what you wrote, to sell f. o. b. mill would result in complete disorganization and consternation and chaos; isn't that what you mean by that?

A. It all depends on what interpretation you put on those words. I would not like to be in a position of having a customer ask me what my price is at a given destination, and not be able to tell him. I think that would result in confusion.

Q. Did you think it would also result in confusion if your customer asked what the price was f. o. b., and you refused to tell him?

A. We do not have many customers that ask us the price f. o. b. mill. They are not interested. They want to know what it is going to cost where they are going to use it.

Q. Not even these dealers that want delivery by truck?

A. I don't get your question.

Q. I was referring to your experience in selling by truck, and I thought you said that was not the case of selling f. o. b. mill?

A. I believe it was.

Q. The dealers there wanted it, didn't they?

A. They thought they wanted it.

Q. Did you say in substance to Mr. Widmann, that you had been through price wars from time to time and that you lived in constant fear of such wars?

7288 A. I may have said that. I tried to give Mr. Widman an honest picture of the business, as I saw it. That is my recollection.

Q. Referring to this special rate that you say was accorded the Government for this Quoddy project, tha is a special railroad rate, I take it?

A. Yes, sir.

Q. Put in by what railroad?

A. Well, I think it was more than one railroad. I know the Maine Central did it. We are located on the Maine Central. I believe the railroads serving the Hudson River and perhaps the Lehigh Valley mills, met the same rate relatively.

Q. The railroads met it, you say?

A. Yes, sir. As I recall it, Eastport is touched by the Maine Central Lines, and when the Maine Central reduced their rate on a through haul, on an all Maine Central haul, they also reduced it on a combination haul from some other distance.

Q. How much lower than the regular rate was the special rate?

A. My recollection is that it was about five or six cents a hundred pounds.

Q. That would be between fifteen and twenty cents a barrel?

7289 A. If my recollection is correct it would be around twenty to twenty-five cents a barrel.

Q. That much lower than the regular rate?

A. Yes, sir.

7290 Q. How did you find out what that special rate was?

A. It was made public. It had to be approved by the Interstate Commerce Commission or the Maine Public Utilities Commission, which has to do with State rates.

Q. Special rates to the Government have to be published?

A. I think so.

Q. Do you understand that land grant rates have to be published?

A. I don't know anything about land grant rates. We do not have them, thank goodness.

Q. Did you make your quotation on a delivered basis?

A. My recollection is that we did, and I think when we made shipments, we executed the bill of lading in our plant for them.

Q. Did you make your quotations based on the Hudson Valley base plus freight from Hudson Valley?

A. I think so.

Q. How much freight advantage did you have over your Hudson Valley competitors, as a result of the special rate?

A. How much lower was our freight rate than their freight rate?

Q. Yes.

A. I am guessing, but I wouldn't say over ten or fifteen cents a barrel. You know, in freight rates, when you go the last one hundred miles, it is one or two cents, the
7291 first one hundred miles may be six or eight or ten cents, and as they add on, it doesn't make much difference.

Q. Ordinarily, as I understood your testimony the other day, the freight difference to your Rockland plant from Hudson Valley is around seventy-five cents a barrel, freight?

A. I would like to correct that. Let me have that question again, please.

(The question is repeated by the reporter.)

By Mr. Wooden:

Q. It is a question of the amount of freight from the Hudson Valley to Rockland?

A. As compared with what?

Q. As compared with the amount of freight from your Thomaston, Maine, plant, to Rockland.

Q. I would say locally, at the Rockland State there would be perhaps a difference of—wait a minute—about 55 cents. Now, bear this in mind, please: There have been two recent increases in freight rates granted by the Interstate Commerce Commission. I look on them as two; perhaps in some instances they were only one.

Q. Isn't 55 cents inclusive or exclusive of those?

A. That is before.

Q. How much did those increases amount to?

A. Relatively, both sides have been increased, but it is a question of fractions, as you read the railroad 7292 tariff, as I understand it.

Q. Can you tell me how much those emergency increases were?

A. That is what I am talking about, emergency increases.

Q. How much they amounted to from the Hudson Valley?

A. It depends on the rate per 100 pounds.

Q. Do you know what it is?

A. Do I know the rate in 100 pounds from Hudson Valley to Rockland? No, sir. I guessed at it the other day, and I guessed it was 75 cents. Now, our rate is 90 cents I guess again, and I subtracted it, and gave you 55 cents, but that amount is just at Rockland.

Q. I understand. It is just for illustration. When you have an emergency freight increase, you add the amount of it from Hudson Valley to Rockland?

A. We do not have any occasion to add any freight from Hudson Valley to Rockland.

Q. Wasn't your price at Rockland the equivalent of the Hudson Valley base price plus freight from the Hudson Valley to Rockland?

A. Mr. Wooden, let us go back a few years—

Examiner Norwood: (Interrupting.) Can't you give him a direct answer to that question?

The Witness: The only thing I fear is a misinterpretation of the question.

7293 Let me have the question again and I will try to answer it.

(The question is repeated by the reporter.)

The Witness: Yes, I think I can say "Yes" to that.

By Mr. Wooden:

Q. When an emergency freight increase was added to the freight existing before, you added the amount of that emergency freight increase to your Rockland price?

A. Wait a minute. I have got to go into it a little in detail, your Honor, to get this thing across. We met a competitive price prior to the time that we established a price base at our plant. We met the competitive price of cement at Rockland.

Q. Yes?

A. Now, if our competitors at the time the freight rate increase became effective, advanced their destination price at Rockland, we would not change our destination price at Rockland.

7294 Q. But if they did advance their destination price at Rockland by reason of the emergency freight increase, you did?

A. If we wanted to get the benefit of the increase or save ourselves an additional freight absorption.

Q. In other words, there was no additional cost to you in the freight?

A. Well, there would be if you did not change your destination price.

Q. You would lose—

A. (Interrupting.) Yes, that's right, and I am not trying to lose anything.

Q. Was it four per cent emergency charge that was imposed?

A. I would not want to say what it was. I think it was ten per cent increase up to a certain figure, and then fractions and more fractions, and so forth.

Q. Then you took advantage of the fact that you were the only mill there in that locality to add to your net realization the amount of the freight increase?

The Witness: May I have that question again, please?

Examiner Norwood: Read it.

(The question is read by the reporter.)

A. That would not add anything to our net realization, sir. I thought I made that clear.

7295 Q. Why wouldn't it? You did not have any freight from the Lehigh Valley or from the Hudson Valley to Rockland?

A. Why not?

Q. You do not ship from Hudson Valley to Rockland?

A. No, but I had freight from Rockland to Rockland.

Q. You mean Thomaston to Rockland?

A. Well, Thomaston.

Q. That is a small fraction—

A. (Interrupting.) As a matter of fact, I think the increase from Rockland to Rockland was more than the increase from Hudson to Rockland.

Q. You mean from Thomaston to Rockland?

A. Yes. I call the mill sometimes Rockland and sometimes Thomaston.

Q. What is the amount of your freight from Thomaston to Rockland?

A. I think it is six cents a hundred pounds today, I think.

Q. Six cents a hundred pounds?

A. I think so.

Q. And the freight from Hudson Valley to Rockland?

A. Well, I guessed that as 75 cents before. I will still stick to that guess. And it would be about 19 cents a hundred pounds.

7296 Q. When the emergency charge was added on to the freight from Hudson Valley you added that on to your mill net realization less the amount of the increase that applied from Thomaston to Rockland?

A. We added on the freight increases prescribed by the new tariff.

Q. It did not prescribe that you should add freight when you did not have freight to pay from the Hudson Valley, did it?

A. No, but it prescribed that we add freight from Rockland to Thomaston, or Thomaston to Rockland. That is what we added.

7297 Mr. Ackerman, don't you have an advantage, a distinct advantage, by reason of your location there in Maine for your nearby business? Wasn't that one of the reasons you put the mill there?

Examiner Norwood: Will you answer that?

The Witness: Which question? There are two questions there.

Mr. Wooden: Both of them.

Mr. Leisure: One at a time, please.

The Witness: Have we not a distinct advantage due to our local nearby freight sales? Yes, sir.

By Mr. Wooden:

Q. Wasn't that one of the reasons that you put your mill there?

A. We had a large New England business when we contemplated the plant, and we thought we were going to make some money.

7298 Q. And you knew the price there was based on Hudson Valley plus freight from Hudson Valley?

A. That is right.

7302 C. J. BRISTER, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

I have served as vice president of the New York Central Lines for 8 years and was in that position throughout the year 1931. During 1931, in connection with my 7303 duties, I attended one conference in New York City with representatives of cement manufacturers, building supply dealers and other railroad divisions with respect to the motor truck transportation of Portland Cement.

By Mr. MacIntyre:

Q. In connection with matters discussed at that conference, did you have correspondence with Mr. R. 7304 M. Collyer, chairman of the Traffic Executive Association, Eastern Territory?

A. There was some correspondence with Mr. Collyer.

Q. Mr. Brister, I show you a document which has been marked for identification and received as Commission's Exhibit 1043-A and ask you to state if you recognize that to be a part of the correspondence about which you have just spoken?

A. Probably. I will have to refer to my file. I am not definitely certain about it, but I have no doubt it is correct. If you want me to verify that, I will look at my file.

Q. Will you refer to your file and see if that will help you in determining whether or not it is a file of the correspondence about which we have just talked?

A. (The witness refers to file of papers) That is correct. I have that in my file, a copy of it (handing paper to counsel).

Mr. MacIntyre: Reference is made to Commission's Exhibit 1043-3P and documents which have been marked for identification as Commission's Exhibits 1152-A and B, the latter two being the original of which 1043-3-P is a copy.

Mr. Leisure: Let me see that first letter.

By Mr. MacIntyre:

Q. Mr. Brister, I now show you documents
7305 marked for identification as Commission's Exhibits 1152-A and B and ask you to state what you know about those?

A. I find a copy of this letter in my file. The letter itself is not signed by me personally.

Q. Does it appear to be signed by anyone that is a subordinate of yours?

A. Yes, many of my subordinates have authority to sign letters in my name. I may or may not have seen it. I do not remember it now.

Q. But you do have a filed copy of it in your file?

A. Yes, I have a filed copy, and it is undoubtedly the original letter.

7306 We now offer in evidence 1152 A and B.

Examiner Norwood: That is a letter I held without ruling on it yesterday. Counsel stated objections to that on record yesterday, one of which was that the identity was not shown.

Examiner Norwood: No objection to the identification, then?

Mr. Leisure: Not if the witness says he wrote it.

Mr. Wooden: Your Honor, Mr. Leisure is raising
7307 again the point about which we went to the Commission and argued it, and the Commission held it competent.

Mr. Leisure: May I ask the witness if he wrote the letter?

The Witness: I have no recollection of dictating it.

Mr. Leisure: Then I object to it on that ground, further.

Examiner Norwood: The objection is overruled and the exhibit is received as marked.

Mr. Hershberger: Do you know whether the statements in that letter are true?

The Witness: Inasmuch as I did not personally interview the people that are referred to there, I have to rely upon information given me by officers of our company. I did not personally interview them.

Mr. Hershberger: So you cannot vouch for the accuracy of it?

Examiner Norwood: Answer that question, whether or not you can vouch for the accuracy of it.

The Witness: I cannot personally, no.

Mr. Leisure: I make the further objection that
7308 the document is pure hearsay.

Mr. Wooden: All those questions, your Honor, are covered by the ruling of the Commission on the document itself.

Examiner Norwood: I think clearly this document should be received for reasons which I have stated many times, which distinguish this letter from some memorandum which the witness might have had. The fact that the letter goes from this office to the addressee there, and all the circumstances surrounding it, distinguish the letter from some verbal statements that such witness might make, and the fact that he does not recall the instance renders the paper more admissible when it is identified.

Mr. Leisure: Your Honor, as I understand these proceedings, they are to be hearings. They are not pro forma proceedings, where we are to put something in evidence that corroborates conclusions that we have already made, and if we find something that does corroborate a conclusion, that has already been made, then we admit it in evidence. I understand that to be the purpose of these proceedings. If a letter of this kind goes in without anybody knowing who wrote it, what chance have we got to cross examine the man who vouches for unsworn statements?

7309 Clearly we should have some opportunity, there should be some fairness about the proceeding which gives us the opportunity of presenting the other side of the case. This is not just a one-sided case, where anything that the Government says is true and everything that we say is wrong. It least we should be allowed to

present outside of the case. We are totally deprived of presenting any side of the case if letters can be put in here without calling the witnesses to the stand, so that we are deprived of examining them and finding whether their statements are true or false, and letters of that character are not only irrelevant, they are vicious in a proceeding of any kind, because we cannot meet them.

7310 (COM. EX. 1052-A and B was offered and received in evidence.)

Mr. MacIntyre: Reference is now made to Exhibit 1043-3R and the document which has been marked for identification as Commission's Exhibit 1153, the latter being the original of which 1043-3R is a copy.

By Mr. MacIntyre:

Q. Mr. Brister, I now show you the document which has been marked for identification as 1153, and ask you to state what you know about that.

7311 The Witness: I have a copy of this original letter in my files, it was signed by somebody in my 7312 office, I cannot say offhand, in the regular course of our business, signed by a man undoubtedly who was fully authorized to sign my name.

By Mr. MacIntyre:

Q. That is marked 1153?

A. It is marked 1153.

Mr. MacIntyre: We again ask that 1153 be received in evidence.

Examiner Norwood: Off the record.

(Discussion off the record.)

Mr. Leisure: May I ask the witness a question, your Honor?

Examiner Norwood: Certainly.

By Mr. Leisure:

Q. Mr. Brister, did you write this letter, Exhibit 1153?

A. I did not.

Examiner Norwood: Did you dictate it?

The Witness: I did not. There are a great many things I have not time to handle, all the correspondence that comes in to my office, I have thoroughly reliable men who are authorized to dictate and sign my name to letters.

Examiner Norwood: What did you have to do with

this? Did you relate the facts to this assistant so that he might cover it with a letter?

7313 The Witness: Repeat the question, please.

(The last question was read by the reporter.)

The Witness: I do not have time to relate the facts about a thousand things which come into my office. There is a foundation laid down for most things, and my office carries on.

Examiner Norwood: Was this letter with regard to that meeting?

The Witness: This particular one?

Examiner Norwood: Yes.

The Witness: This appears to be a report made of a conference with one of the cement shippers, which meeting was held some time the summer of 1931.

Examiner Norwood: How did the writer get hold of the data for writing this letter?

The Witness: I sent it to one of our officers located some place convenient to the territory where the manufacturers were situated.

7314 Mr. Zimmerman: Would it not be pertinent to ask the witness whether he has any knowledge at all of the circumstances related in the letter?

Examiner Norwood: Yes.

The Witness: I have got too much to do. I cannot do all these things myself. I have general knowledge.

Mr. Zimmerman: Do you have any personal first hand knowledge?

The Witness: About this letter?

Mr. Zimmerman: Yes.

The Witness: No.

Mr. Leisure: On that statement, your Honor, we object to the letter as being immaterial, incompetent and irrelevant. The witness is on the stand and can be questioned. In other words, sworn testimony can be obtained as to anything he knows about the events which are purported to be described in the letter. So far there is no basis whatever for offering the letter in evidence.

I object to it because the witness did not write it and had nothing to do with the transaction and because he is on the stand. It is immaterial, incompetent, and irrelevant.

7315 (COM. EX. 1153 was offered and received in evidence.)

7317 By Mr. MacIntyre:

Q. You will go on record here, Mr. Brister, as stating, in vouching for this letter, that that is a letter that was prepared and sent out from your office in due course of business, and prepared by subordinates of yours, won't you?

Mr. Zimmerman: Your Honor—

Examiner Norwood: (Interrupting) Just a minute.

A: That is absolutely correct.

7318 Examiner Norwood: You do not deny that this went out of your office under your authority? Is that correct?

The Witness: Under the general authority given. Absolutely no question about that.

Examiner Norwood: I am going to receive this, as heretofore stated.

7319. The witness, in response to a subpoena, produced and identified Com. Exs. 1157-A-B as the original of a letter, dated August 19, 1931 from Mr. W. W. Campbell, President of the National Builders Supply Association addressed to Julian S. Eysmans, C. J. Brister, Golder Shumate, C. J. Denny, D. H. McFarland and E. J. Holway.

Mr. MacIntyre: The witness has produced the letter called for, and I ask that it be given the next number for identification, your Honor.

Mr. Healey: Can we have a copy substituted and have the original remain in our files?

Examiner Norwood: By agreement of counsel.

(Discussion off the record.)

Mr. MacIntyre: Your Honor, we offer documents 1157-A and B for the record in evidence, and suggest that upon an examination of it by counsel for respondents' with Commission's Exhibits 1043-2-U and 2-W, that they agree if they find one to be a copy of the other, to substi-

7320 tute for the original 1157-A and B, 1043-2-U and 2-W.

Mr. Leisure: May I ask the witness a question?

Examiner Norwood: Certainly.

Mr. Leisure: Mr. Brister, I notice Mr. Campbell puts a P. S. "Pardon this group letter. I am saving time." I notice he did not have time to sign the letter to you. Did you have time to read it?

The Witness: I did read it. I would not know what it contained unless I had.

7321 Mr. Leisure: Are you personally acquainted with Mr. Campbell?

The Witness: I am now.

Mr. Leisure: As a result of this letter?

The Witness: That is the first time I ever met him, after he came to New York.

Mr. Leisure: Again, your Honor, we object to this letter, on the same ground that we objected to the others.

Here is a witness on the stand. Both Mr. Eysmans and Mr. Campbell were on the stand. The letter should have been offered, if it was going to be offered, while one or the other of those gentlemen was on the stand, so that we could cross-examine them about the contents of the document. To bring in here now an offer in evidence by a man that knows nothing about the letter, cannot vouch for the accuracy of it, all he can say is, "Yes, I received it"—I submit that is very improper procedure.

7322 Examiner Norwood: With regard to this document, where originals are being substituted for the documents already received, I do not consider it is necessary for me to make any statement. I made a statement to which I referred yesterday,—I think the statement was made April 7th,—that whether they are signed or are not signed in the circumstances surrounding the documents indicate the genuineness, and for other reasons I stated there, they will be received.

Mr. Leisure: That all depends on the viewpoint. If the viewpoint is that you want to get something to corroborate something else, that is so; but if you want to have a fair hearing in a trial so that we can cross-examine whether the statements are accurate, I submit the evidence is totally bad.

Examiner Norwood: In those letters the writers in most instances, where they have not been identified in other ways, and in all of them, the papers concerned appear to be genuine and genuineness in most cases has not been questioned, and can be determined.

Mr. Hershberger: It is not a question of genuineness. It is a question as to their contents.

Examiner Norwood: I shall overrule the objec-
7323 tions and receive 1157-A and 1157-B.

(COM. EX. 1157-A and 1157-B was offered and received in evidence.)

Mr. Leisure: In regard to Mr. MacIntyre's suggested

stipulation that one document be substituted for the other, we of course have no objection to that.

Examiner Norwood: Yes.

Mr. MacIntyre: You agree that 1043-2U and 1043-2W are exact and true copies of 1157-A and 1157-B, and so stipulate?

Mr. Leisure: They appear to be copies. But we preserve all our objections, your Honor, to the documents, although we are allowing them to be substituted just as they would substitute a photostat for an original.

Mr. MacIntyre: We suggest that 1157-A and 1157-B be returned to the witness.

(1157-A and 1157-B handed to the witness.)

Examiner Norwood: That is, that in the case of this one set of exhibits similar exhibits, instead of withdrawing 1043-2U and 1043-2W, which are the copies, they will return the originals here received to the witness.

Let the record so show.

7324 By Mr. McIntyre:

Q. Mr. Brister, do you have as customers of the railroad company with which you are affiliated, cement manufacturers as shippers over your lines?

A. A great many of them.

Cross-Examination by Mr. Leisure.

7325 Q. In regard to that meeting that you have before you there, Mr. Brister, that was July 26th, or July 22nd?

A. July 22nd.

Q. July 22nd, 1931?

A. Yes.

Q. Have you got any records there or do you recall what representatives of cement manufacturers attended that meeting?

A. I have no list of that. I made no memoranda of that.

Q. Who called that meeting, do you know?

A. The man that signed this letter was Mr. W. W. Campbell, President of the National Builders Supply Association.

Q. He was primarily interested in dealers, was he not?

A. I know very little about Mr. Campbell, didn't know him at all when I received the letter. I made some inquiry

and found he was the president of an association of building supply people.

Q. I notice in this letter which you said you read, that he wrote you a—he says "You should be equally interested with the dealers if not a great deal more so." You knew, of course, when you read that letter, that he was representing dealers and was interested in representing the dealers?

A. That would seem to be obvious.

Q. Yes. Now, when you answered Mr. MacIn-
7326 tyre's question that you attended to meeting of cement manufacturers, what did you base that recollection on: something Mr. Campbell had told you?

A. I was going to correct that before, because I did not remember definitely who was there at that time and I cannot say positively that any actual cement manufacturer was there.

Q. Did you know, Mr. Brister, when you attended that meeting, or did you have any intention of conspiring and entering into an illegal agreement with the dealers, to ship cement on your road?

A. I don't usually do illegal things wittingly.

Q. Do you know that these papers which have been offered in evidence this morning, which you have produced, have been offered on the theory that you are a co-conspirator?

A. No, I don't agree to that.

Q. Do you mean to say that you were not informed of the charges against you and your company when you were served by a subpoena in this case?

7327. Examiner Norwood: How is that relevant, Mr. Leisure, at this time? Unless you simply want to invoke the sympathy of this witness in some way, I don't know just why.

Mr. Leisure: Will you allow me to state why?

Examiner Norwood: Yes.

Mr. Leisure: You have received in evidence certain documentary instruments which are prejudicial to the rights of the cement respondents in this case, and you have admitted those documents in evidence upon the theory that this gentleman's railroad is a co-conspirator and collaborated and connived with the cement respondents in bringing about illegal actions. Therefore, it seems to be to be very pertinent to ask the witness, who attended this meeting, whether he ever did any such thing or not.

7328 Q. Mr. Brister, when you were served with a subpoena, you were not informed that you were being charged in this proceeding as a co-conspirator?

A. No.

Q. So you came here this morning in a judicial or in a quasi-judicial proceeding, without being informed in advance of the charges that have been made against you?

A. I have heard of no charges that have been made against us.

7329 Q. Did you have any intention—

Examiner Norwood: (Interrupting) I think it should possibly be made clear that there are no charges made against this witness. He is not in the complaint whatsoever. But certain testimony is received on the theory that all these agencies which entered into activities to suppress trucking are co-conspirators, and that therefore certain evidence is receivable, because of that, although they are not joined in this proceeding.

Mr. Leisure: Dour your Honor also think it advisable to inform him that he is therefore or may be liable to threefold damages as a result of these proceedings. Does your Honor also think it is important to inform him of that fact?

Examiner Norwood: No.

Mr. Hershberger: Ought he not also to be informed of his constitutional rights, if any, as to testifying in this case, as the charges may be the basis of criminal action against him and his company?

Mr. MacIntyre: The Government has saved him, and all those who come here, as to any criminal proceedings against his company and against the witness.

Examiner Norwood: Go ahead with your cross-examination. You may bring out anything you want to.

7330 By Mr. Leisure:

Q. Mr. Brister, what was the background of this meeting that you attended? Do you recall how it came about?

A. I have a very hazy recollection of the whole affair, for the reason, as I stated early in my direct examination, that it was a long while ago, there was nothing particular about it that registered in my mind. I know that a meeting was held. I do not even remember now who addressed the meetings. The railroads both at that time and since have naturally been very much interested in the question of

truck competition. Trucks have taken a large volume of business away from the railroads. In some cases we have reduced the rates to get it back, and certainly tried our hardest to prevent further depredations upon our legitimate traffic, and naturally anything that savored of an opportunity to point out to a shipper that he ought to continue favoring a railroad, we would do all we can in an entirely legitimate way.

7331 Q. Did you at that meeting enter into any agreements either with the dealers or anyone else, in regard to truck shipments?

A. I don't know what you mean by "agreements."

Examiner Norwood: Any understanding?

The Witness: We certainly did not agree to any conspiracy, if that is the meaning of your question.

Examiner Norwood: Were there any understandings with regard to trucking?

The Witness: It is pretty hard for me to recall just what was agreed to. But I will give you the best of my recollection.

Examiner Norwood: Go ahead.

The Witness: It was stated, after statements were made by those who addressed the meeting and whose names I do not recall now, that by consultation with various cement companies, there might be an opportunity for the railroads to get the business back to the rails, and continue it on the rails. The territory I think was divided up, that is, the territory east of Chicago, north of the Ohio, and Potomac Rivers. Various railroads, in given territories, I

7332 think, agreed to consult with cement shippers for no other purpose whatever than to discuss with them the possibility of getting the business back on the rails.

7333 Q. (Continuing) I now ask you both questions, whether or not you set out to induce the cement manufacturers as a group to come to any agreement or understanding to penalize trucking in any way?

A. None that I know of.

J. H. ACKERMAN, previously duly sworn, resumed the stand and testified further as follows:

Direct Examination (Continued) by Mr. Wooden.

Q. Mr. Ackerman, I show you paper marked for identification Commission's Exhibit 272-F, previously iden-
7334 tified by Mr. Widman as from your files. Will you also identify that letter?

A. It is numbered 272-F. It is a sample, or a suggested letter—or perhaps I should say one of a series of suggested letters—that my district sales manager with an office in Boston drew up and suggested that we send to our customers. It was never sent to anyone.

Q. It was prepared for your Maine customers, was it?

A. It was an idea, and a dizzy one in my opinion, of my district sales manager. It was never approved.

Q. Is that your writing on the margin of the paper?

A. No, sir.

Q. Whose is it?

A. That is the handwriting of Mr. Frank H. Smith, who was then president of our company.

7335 The Witness: I am a sales manager. That is a photostatic copy of a suggested letter or one of a series that my district sales manager thought would be a good idea to mail to our trade. He sent it down to headquarters for approval and that ends it. It was addressed to me. It was run off on the typewriter. It was addressed to me, but it was never mailed to anybody.

7336 Examiner Norwood: Did you act on the suggestion in any way whatsoever?

The Witness: We did not.

Mr. Wooden: They turned it down.

The Witness: Yes, we turned it down.

Mr. Wooden: And the president made certain statements on the margin.

The Witness: I made the same ones myself. It goes right back to what I said to you this morning. It is bad business to argue with customers. When you argue, you lose your customer.

Mr. Leisure: Now, there are two things, your Honor. One is, unless the handwriting is identified, and I did not notice whether the witness identified it or not—

Examiner Norwood: He identified the letter, yes.

Mr. Leisure: Yes. There is no showing that the man who wrote this letter had any authority to write such a letter or was given any authority to write it.

(COM. EX. 272-F was offered and received in evidence.)

7337 Q. I am showing you papers marked for identification 266-A and B. What are they?

A. Well, now, wait a minute. You are a little bit gummed up.

(Discussion off the record.)

The Witness: Is that 266-A.

Q. I believe so, yes.

A. 266-A is a photostatic copy of a letter addressed to me, inter-office correspondence from the district sales manager in Boston.

Q. Your district sales manager?

A. I assume so. It is not his signature, but there is an initial down here. Apparently his girl signed it.

Q. Was that obtained from your files, Mr. Ackerman?

A. You will have to tell me that.

Q. I am asking you.

A. I do not know.

Q. It is addressed to you. Did you receive it?

A. Well, I question whether I personally ever saw this, simply for the reason that there is a note here "Noted, F. H. S. p."

Q. Who is that?

A. F. H. S. are the initials of our president and "p" is the initial of my assistant, and he no doubt put Mr.
7338 Smith's initials on there and then initialed it as having shown it to Mr. Smith. Had I been in the office, I would probably have taken care of it instead of the assistant having shown it to the president.

This Exhibit No. 266-B is a photostatic copy of an inter-office memorandum from me to Bowe, our Boston District Manager, and it is initialed by the dictator, which was Pope, my man.

Apparently he dictated it.

Mr. Wooden: Now, your Honor, I offer these two papers in evidence, 266-A and B.

7339 (COM. EX. 266-A and 266-B was offered and received in evidence.)

J. H. ACKERMAN, previously duly sworn, resumed the stand and testified further as follows:

Direct Examination (Continued) by Mr. Wooden.

Q. Has it been your company's policy, Mr. Ackerman, to refuse to let your customers divert cars from one place to another?

7340 A. It depended upon the circumstances, Mr. Wooden.

By Mr. Wooden:

Q. Have you refused to allow your customers to divert cars priced for delivery at one destination, to another destination where the delivered price was higher?

A. Well, that again depended upon the conditions. I can recall instances where we have permitted it and instances where we have refused.

Q. What differentiates between the cases where you have permitted it and where you refused?

A. Well, a man conceivably might have ordered more cement that was needed to complete an operation. He may have communicated with us and said: "I have an extra car or two up in my job; help me divert it to some

7341 other party, help me dispose of it, I do not need it."

That would be a case where we would acquiesce in his request, if possible, to divert. Other cases where they have attempted to buy cement from us at a destination where our price might be lower than the destination at which the car had been consigned, we tried to stop it.

Q. It is a similar situation, only it was applicable to rail shipments, that you had in the trucking of it?

A. It might be similar in some respects, sir.

Q. Did your company at any time in recent years adopt a policy of declining to sell dealers who were handling imported cement?

A. Yes, sir, we did.

Q. When?

A. Some years ago.

Q. Was it early in 1933?

A. It may have been, I really do not remember.

Q. Was it about the same time that other companies adopted a similar policy?

A. I think we were pretty slow in reaching a decision to adopt such a policy. In other words, I think there were other companies that did it long before we did.

Q. How long would you say?

A. I would say several years. That is my recollection of it.

7342 Q. In this Metropolitan market?

A. I do not know as we ever did it—yes, we did it in this Metropolitan market, but when I was attempting to answer your question I had in mind the Boston area.

7343 Q. In other words, you were slower in adopting that policy in Boston, is that what you mean?

A. Well, we were slow in adopting the policy. Others I am sure were doing it long before we did.

Q. In the Boston market?

A. I presume they did it in all markets. I do not know.

Q. Are you referring to the Lone Star Company, particularly?

A. I think they were the ones that adopted such a policy.

Q. In this particular market area?

A. What do you mean by "this particular market area?"

A. I mean Metropolitan New York, and then I will ask you about Boston next.

A. Let me have the question, please.

Examiner Norwood: Read the question.

(The question was read by the reporter.)

A. Yes, sir.

By Mr. Wooden:

Q. Does that apply to Boston too?

A. I think so.

7344 Q. When you were slow in following the policy in that regard, adopted by others, did you get some increase of business from dealers who were handling foreign cement?

A. No, I don't think we got any increase of business. I was a little bit fearful that we might lose some.

Q. How could you lose some by selling dealers who handled foreign cement? If other companies were not selling them—how could you lose by that?

A. My answer was directed at what I understood to be

your question: How could we lose business if we did not adopt the policy. I said that we did not adopt the policy because if we adopted the policy of refusing to sell, we might lose some business.

Q. In other words, you had something to gain by not refusing to sell dealers who handled foreign cement? In other words, couldn't you get business from dealers handling foreign cement that formerly had been cut off by others?

A. Well, Mr. Wooden, that is not, in my opinion, the nature of the cement business.

Examiner Norwood: He is asking you whether, as a matter of fact, that was what you did, and the business had been turned down away from the other mills.

The Witness: Wait a minute. You have got me all
7345 mixed up.

What question do you want me to answer?

Examiner Norwood: Answer my question.

The Witness: If it did what?

Mr. Wooden: If you obtained customers handling foreign cement that had formerly been supplied by other mills?

The Witness: I started to explain that, I think, by saying that a cement company of our size is somewhat limited, you might say, in its opportunity to get business. We are not as well known a brand perhaps as some of our larger competitors, and our sales are with more or less exclusive accounts. That is a general statement.

By Mr. Wooden:

Q. You did not make a general solicitation?

A. Well, we might make a general solicitation, but I have always figured it was better for us to concentrate our fire on certain accounts, rather than to try to spread it so thin that it doesn't make much effect.

Examiner Norwood: That does not answer the question as to whether you did actually get some some business that had been turned away by other mills.

The Witness: I thought I answered that question by saying "No, we didn't get any."

7346 Examiner Norwood: Go ahead.

By Mr. Wooden:

Q. Did you announce to your salesmen that you were not going to solicit or accept business from dealers having foreign cement?

A. When we adopted the policy, no doubt we notified our salesmen to stay away from those accounts.

Q. Did you have some dealer accounts that you lost because of their handling foreign cement and your declining to sell them?

A. Yes, sir.

Q. Where were they?

A. Well, there was one in Boston that I recall.

Q. Can you give his name?

A. The Portland Stoneware Company.

Q. Did you ask your salesman to ascertain and report upon the amount of stocks of foreign cement on hand in the principal markets, like Boston and New York?

A. No, sir; I depended upon the Government reports for that.

Q. Did you have any of your salesmen, or did any of your salesmen, to your knowledge check on the stocks of foreign cement in the warehouses or piers in Boston or New York?

A. Well, they may have, as a matter of curiosity or interest. I do not think they were instructed to

7347 do it.

Q. Did you get reports from them?

A. Occasionally we may have.

Q. Did any of your salesmen, to your knowledge, report to you the names of dealers who were handling foreign cement?

A. They may have—yes, I think they did.

Q. I will rearrange it. Did you have any information from other manufacturers' representatives as to what dealers were handling foreign cement?

A. No, sir.

Q. Did you supply any information that you had as to what dealers were handling foreign cement, to other manufacturers?

A. No, sir.

Q. Were you the man who handled the matter of your policy with regard to dealers handling foreign cement so far as your company was concerned?

A. I would say partly, yes, after consultation with my superior or, perhaps, some of my salesmen or dis-

7348 trict sales managers.

Q. What is your present policy with regard to dealers handling foreign cement?

A. We will sell a dealer whether he sells foreign cement or not, if we are able to do so and choose to do so.

Q. How long has that been your policy?

A. Well, I would say two or three years. I am not sure, sir.

Q. Going back—

A. (Interrupting) Or to the time whenever we discontinued it.

Q. That is what I am trying to find out.

A. I honestly don't remember.

Q. How long was the policy in effect, would you say, of not selling dealers handling foreign cement?

A. Our policy?

Q. Yes.

A. Oh, I would say six months to a year.

Q. Have you put in from time to time, so-called arbitrary prices, to meet competition of foreign cement?

A. Well, we have met such competitive arbitrary prices as we found.

Q. You never initiated a special price of that sort of your own?

7349 A. Well, a few.

Q. Where?

A. On this thing in Maine, this month, my recollection is we put in a few, three or four.

Q. In the State of Maine?

A. In the State of Maine, yes.

Q. That was something you had never done before there?

A. We have never done it before there.

Q. Did you initiate any special prices to meet foreign competition in Boston or in the New York market?

A. No, sir.

The witness identified Com. Ex. 263 E as an announcement, dated July 12, 1935, regarding a policy of maintaining a stock of "our" cement at the 25th Street, D. L.
7350 & W. railroad terminal at Brooklyn, containing the prices and terms at which it would be sold.

Mr. Wooden: I offer it in evidence.

(COM. EX. 263-E was offered and received in evidence.)

7351 The witness identified Com. Ex. 259 A as a photostatic copy of a letter addressed to Walter E. Bowe, District Sales Manager of "our" company, dated September 9, 1935, signed, or rather, initialled, by his assist-

ant. He presumes this is a photostatic copy of a file copy; 259 D as a photostatic copy of a memorandum addressed to Walter E. Bowe, District Sales Manager, dated September 13, 1935, and initialled by his assistant.

Mr. Wooden: I offer these in evidence.

7353 (COM. EX. 259-A and 259-D was offered and received in evidence.)

The witness identified Com. Ex. 263 I and 263 J as pages 1 and 2 of a photostatic copy of a letter addressed to "our" Boston office on the stationery of Building Materials, Incorporated, dated August 22, 1936; 263 K and 263 L as pages 1 and 2 of a photostatic copy of a carbon of a letter dated August 27, 1936, addressed to the president of Building Materials, Incorporated of Fall River, Massachusetts, and initialled by him. The latter is a reply to the former.

Mr. Wooden: I offer this in evidence.

7354 (COM. EX. 263-I, J, K and L was offered and received in evidence.)

The witness identified Com. Ex. 263 C and D as pages 1 and 2 respectively of a memorandum addressed to the witness dated August 31, 1936, from his district sales manager in Boston, and initialled by "him".

7355 (COM. EX. 263-C and 263-D was offered and received in evidence.)

The witness identified Com. Ex. 270 A as a photostatic copy of a copy of a memorandum addressed to Walter E. Bowe, District Sales Manager of "our" company, dated June 9, 1936, and initialled by the witness.

Mr. Wooden: I offer it in evidence.

Mr. Zimmerman: No objection.

Mr. Hershberger: No objection.

Examiner Norwood: Received as marked.

(COM. EX. 270-A was offered and received in evidence.)

Q. Can you state, Mr. Ackerman, what the policy of your company has been as to whether you sell dealers for shipment to towns where they were not in business?

7356 A. We do not always confine our shipments to a dealer to his home town.

By Mr. Wooden:

Q. Is it your general policy to do so, with exceptions?

A. I would say as a general policy we do it, but there are exceptions made from time to time.

Q. In which way are the exceptions?

A. Well, the exception is to ship a dealer outside of his town.

The witness identified Com. Ex. 270-J as an announcement, dated April 9th, 1935, which "we" sent to "our" trade, describing "our" marketing policy in detail.

7357 Mr. Leisure: Mr. Ackerman, in putting out this notice, did it have any connection with any other cement manufacturers or was it purely confined to your own company?

The Witness: The notice was confined to our cement, and sent to our customers, or prospective customers.

(COM. EX. 270-J was offered and received in evidence.)

7358 By Mr. Wooden:

Q. Mr. Ackerman, this exhibit 270-J, your circular to the trade dated April 9th refers to your circular on February 21st, and to minor changes made in the second circular as compared to the first. Will you say in general what those changes were?

A. I will be glad to produce the notice of February 21st, and let you compare them.

Q. All right; will you do that?

A. Certainly.

Q. I notice in 270-J you state what you accepted as the definition of an equipped cement dealer.

A. Yes.

7359 Q. Did you receive from time to time from various dealers associations lists which gave the names of what they considered to be equipped cement dealers?

A. Of what they considered to be equipped cement dealers?

Q. Yes.

A. A list of dealers?

Q. Yes.

A. Yes and no. We purchased, I recall, a directory issued by the New York State Builders Supply Association of their members, and it was valuable to us in preparing mailing lists and things of that sort. I think there may have been one or two others that had such a directory.

Q. Did you consider those as containing the names of the equipped cement dealers?

A. Well, they contained the names of the building supply dealers, Mr. Wooden.

Examiner Norwood: Who were members of that association?

The Witness: Who were members of that association.

By Mr. Wooden:

Q. Did you get similar lists from dealers associations in New England?

A. I do not now recall whether the New England association issued one or not.

7360 Q. In Pennsylvania?

A. I think the Eastern Pennsylvania Dealers Association did have a directory, but I am not sure.

Q. Were you aware of any conferences or negotiations between dealers associations and cement manufacturers with regard to what classes of trade should be sold by each?

A. No, I was not.

Q. Did you put out your circular of April 9th, Exhibit 270-J, with any knowledge that other cement manufacturers were putting out similar circulars?

A. My recollection, Mr. Wooden, is that one fine morning we learned that one of our principal competitors had issued a statement very similar to that one.

Q. Who was that?

A. I do not recall who it was now.

Q. Was it Lehigh?

A. I do not recall. I honestly do not recall.

Q. Then what did you do?

A. I thought it was a pretty clear exposition of policy, and rather than be at a disadvantage, I hastened to issue a similar one.

Q. Had your policy with regard to the dealer been any more unfavorable to the dealer prior to that time?

A. Well, you will have to look at the one dated February 21st to decide that.

7361 Q. Well, even prior to February 21, what would you say?

A. Well, that is a matter of opinion.

Q. I am trying to get your opinion.

A. It may have been.

Q. In what respect?

A. Beg pardon?

Q. In what respect?

A. Well, I do not recall. I do not recall exactly what the policy was February 21st or what it was prior to that time.

Q. Had it been your company's policy prior to 1935 to sell direct to the Federal Government in car lots?

A. I think we have always sold the Government direct at minimum prices.

Q. In this circular you announce do you not, that cement purchased by Federal Emergency or Unemployment Relief Agencies of the Federal Government will be sold to the dealer. Is that right?

A. Your statement is correct. We did not consider these Emergency or Unemployment Relief Agencies as described here as permanent branches or part of the Federal Government. As I recall it, it was the C.C.C., or W.P.A., and so forth.

7362 The witness identified Com. Ex. 1158 A as a photostatic copy of a letter addressed to him by the executive secretary of the New England Builders Supply Association, dated July 12, 1929; 1158 B as a photostatic copy of a letter, dated July 15, 1929, addressed to the executive secretary of the New England Builders Supply Association, initialled by him, and apparently in reply to the letter of July 12th.

7363 (COM. EX. 1158-A and 1158-B was offered and received in evidence.)

7368 New York City, N. Y.
Wednesday, June 1st, 1938.

7369 Mr. MacIntyre: It should be noted for the record that a subpoena duces tecum was directed to Mr. F. E. Paulson, vice president of the Lehigh Portland Cement Company, Allentown, Pennsylvania, for his appearance here this morning at ten o'clock. Among other things, the subpoena called for his production here today of an original of a letter signed by J. P. Large, general traffic manager of freight of Pennsylvania Railroad Company, Philadelphia, Pennsylvania, addressed to Mr. F. E. Paulson, vice president of the Lehigh Portland Cement Company, Allentown, Pennsylvania, under date of May 24, 1932, regarding the Pittsburgh trucking situation and certain agreements relative to the discontinuance of trucking in

the Pittsburgh district. It is now noted that Mr.
7370 Paulson has not appeared as a witness. It is understood from counsel of the respondent that the reason for his non appearance is his failure to receive the subpoena by reason of the fact that he is no longer in the employ or at the offices of the Lehigh Portland Cement Company, Allentown, Pennsylvania. It is also understood from the statement just made by counsel for the respondents that they are willing to accept Commission's Exhibit 1043-5H in lieu of the original letter which the subpoena to Mr. Paulson called for him to produce this morning.

Mr. Leisure: Mr. MacIntyre, I take it, has reference to the letter of May 24, 1932 designated 1043-5H bearing the stamped signature of J. P. Large, purporting to be addressed to Mr. Paulson. We raise no point of the fact that a photostat or copy is now being offered, but we do desire to reserve and keep all of our previous objections to these exhibits. We feel that not Mr. Paulson, the recipient of the letter, should be called by Mr. MacIntyre, but Mr. Large, who purports to have written the letter and who is supposed to vouch for it and the person whom we can cross-examine, should be called. Mr. Paulson, if he were on the witness stand, would not be able to explain what Mr. Large meant by his letter. All he could possibly do would be to explain that he received it, so we still
7371 maintain that the letter is incompetent, immaterial and irrelevant until some proper basis is laid for its receipt in evidence.

7372 Mr. MacIntyre: I would like to ask in that connection whether Mr. Leisure would be willing to stipulate at this time that Mr. Paulson did receive the letter of which 1043-5-H is a copy?

Mr. Leisure: I think that follows, yes, from what I have already said. The letter is addressed to Mr. Paulson, and a copy is being offered in evidence. I assume that if Mr. Paulson was here he would say that he received the letter.

Mr. Wooden: I understand, your Honor, that the letter is already in evidence and the question of the competency has already been passed upon by the Commission, leaving open only the question of its authenticity or identification.

I now understand that Mr. Leisure, in so far as his objection went to the fact that it was a copy, it is no longer insisted upon. Is that correct?

Examiner Norwood: Yes.

Mr. Leisure: I assume, your Honor, that with our stipulation it will not be necessary for Mr. Paulson to appear in reference to the subpoena.

Mr. Wooden: That is correct.

Examiner Norwood: That is correct.

7373 WALTER T. MILLER, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

I am connected with Jenny & Lux, Inc., importers of cement, wholesalers of building materials in Boston. I am president and treasurer and general manager of that concern and have been connected with it since 1925.

Q. Will you state in a general way how the company conducts its business in the distribution of imported cement?

A. Yes. Ever since, practically since the beginning of the company, we have imported cement from various European countries and distributed it principally in New England to building material dealers.

Q. Do you bring it in only through the Port of Boston?

A. At the present time, in New York. Up until a year ago, though, our business was almost entirely done through the Port of Boston.

7374 Q. Is Jenny & Lux an old Boston concern?

A. No, it was only established in 1925, just before I became connected with it.

Q. Do you have salesmen soliciting building material dealers throughout New England, or how do you do it?

A. Well, principally within a radius of fifty miles, fifty or seventy miles of Boston. There is one salesman besides myself in New England. We solicit the dealers, though, as far as the sale of cement in concerned; we solicit the dealers within a range to which the sale of imported cement might be limited.

Q. Did you have dealer customers in states other than Massachusetts?

A. Sold through Boston, you mean?

Q. Anywhere.

A. Yes, we have some customers in Rhode Island, a few; and in Maine.

Q. Were they sold through the Boston office?

A. A few of them, yes. Some are sold through Portland, Maine.

Q. Did you have warehouse facilities where you stored your cement before it was sold to the dealers?

A. Yes, on the docks.

Q. Do you maintain considerable sized stocks of imported cement?

7375 A. Do we now?

Q. Have you?

A. Yes, we have. Sufficient to carry a supply between the arrival of steamers from Belgium.

Q. Did you have any difficulty at any time in inducing dealers to handle your cement?

The Witness: Oh, yes, considerable difficulty.

By Mr. Wooden:

Q. Will you describe the nature and circumstances of the difficulties?

7376 The Witness: It was, of course, difficult in the beginning in introducing our cement, to sell the cement to the dealers in preference to domestic cement. There were so many disadvantages to handling it, such as the delay in delivery and the natural prejudice to overcome against any foreign material which has no marked superiorities or differences in quality.

Q. You found that difficulty from the beginning, I take it?

A. Oh, yes.

Q. Did you make some progress in overcoming that sort of difficulty?

A. Yes, over a long period we did. We gradually built up the sales of imported cement.

7377 Q. Did you offer your imported cement for sale at less than the price of domestic cement?

A. Of course we did. It was necessary to do that in order to sell it.

Q. How much less did you have to make the price?

A. At various times there was a differential between the price at which we sold our cement and the local domestic cement ranging from ten cents to twenty-five or thirty cents a barrel, or two and a half cents to seven and a half cents a bag. That is a reasonably close estimate of the differential at comparable points, in other words delivered to

the same relative destinations in the Metropolitan area of Boston.

Q. Will you state whether or not there came a time when dealers who had been handling imported cement, refused to continue handling it?

7378 The Witness: Yes.

By Mr. Wooden:

Q. Will you fix that time?

A. In early 1933.

Q. Will you describe what your experience was in that connection?

A. Early in the year 1933 we became aware of the fact, through what our customers told us, that they had been approached by the various suppliers of domestic cement, who had informed them—

Examiner Norwood: Could you name some of those dealers, Mr. Witness?

The Witness: Yes, sir.

7379 A. Our dealers told us that they would have to give up the handling of imported cement because they had been told by their suppliers of domestic cement that they would refuse to supply them with domestic cement as long as they purchased imported cement.

Mr. Leisure: I move to strike out that whole answer. It is viciously hearsay.

Examiner Norwood: Did they state what dealers, what suppliers, made that demand?

The Witness: Yes, individually they did.

Examiner Norwood: Can you give us some of those?

The Witness: Oh, yes.

7380 Q. Did you actually lose some of those customers that you have referred to generally there?

A. Yes, we lost several.

Q. Can you name some of those you lost under those circumstances?

A. The J. P. O'Connell Company in Boston, who were large dealers and early factors in the ready-mixed concrete business in Boston; the Boston Sand & Gravel Company with its associate company, the Boston Concrete Corporation; the Crystal Sand & Gravel Company at Braintree, Massachusetts; the Watertown Builders Supply Company of Watertown, Massachusetts. Those are a few of them.

Q. Do you have letters from any of the parties that you have named in connection with that matter?

A. Yes, I have some which I produced at a previous hearing.

Q. Was that the hearing before the N. R. A.

A. That is right.

Q. Will you let me see those which you have?

A. (Handing papers to Mr. Wooden.)

7381 The witness identified the following: Com. Ex. 1160A as an original letter received by him in the ordinary course of mail from the C. H. Spring Company, Incorporated, of Newton, Lower Falls, Massachusetts, to Jenney & Lux in regard to their own experience; Com. Ex. 1160 B is an original letter from the Crystal Sand & Gravel Company of South Braintree to Jenney & Lux. That

7382 letter states "his" experience in being refused a supply of domestic cement; Com. Ex. 1160 C as an original letter received by him in the ordinary course of mail from the Liberty Coal & Cement Company of Chelsea, Massachusetts, giving their experience also; Com. Ex. 1160 D as a letter received by him in the ordinary course of mail from the Cambridge Builders Supply Company in Cambridge, Massachusetts, explaining why they could not fulfill a contract with us for a supply of our cement; Com. Ex. 1160 E as a letter received by him in the ordinary course of mail from the Watertown Builders Supply Company, Watertown, referring to their request to us to give the representatives of Keystone Cement Company;

7383 Com. Ex. 1160 F is a carbon copy of the witness' reply to 1160 E.

7384 Q. Will you explain further what you meant by your statement a moment ago that the Watertown Builders Supply Company asked you to give access to your records for a representative of some cement company?

Mr. Leisure: I think that is totally irrelevant and immaterial to this proceeding. It certainly does not bear on any of the issues in the pleadings. I object to it.

Examiner Norwood: Objection overruled.

Mr. Leisure: I would like to have an offer of proof, if it does bear upon any issue.

Mr. Wooden: The whole matter bears upon the alleged boycott of foreign cement; and this is an experience that the witness had in his own business in regard to desired access to his records on behalf of one of the respondents

to check up. That is what I wanted to bring out by it, what his experience was and what the circumstances were that he knows about.

Examiner Norwood: Go ahead and answer the question.

The Witness: The Watertown Builders Supply
7385 Company requested us to allow Mr. Power, who was the sales representative for the Keystone Portland Cement Company, to come into our office and check up our records, to satisfy himself that the Watertown Builders Supply Company had discontinued purchasing imported cement. They explained that this was necessary for them, or it was necessary for them to have some definite proof that they had given up handling imported cement, in order to keep supplied with further shipments of domestic cement.

Q. Did you give such access to Mr. Power?

A. No.

Q. What did you do?

A. We simply wrote them a letter and told them, giving them the date, I believe, when we had discontinued supplying imported cement.

Q. As shown by this exhibit 1160-E (showing paper to the witness)? Is that what that is about?

A. Yes, 1160-E, their letter, simply stating that it would be all right if we advised them when, if we advised Mr. Power to the effect that no more cement was delivered by us.

Q. That was the settlement that you reached with the Watertown, to give them a statement as to when they last bought from you?

7386 A. That is right.

Mr. Wooden: Your Honor, I will offer these papers in evidence.

7387 Mr. Leisure: I would like to ask the witness a question about these exhibits, if I may?

Examiner Norwood: Yes.

Preliminary Examination by Mr. Leisure.

Q. Mr. Miller, I notice that this Exhibit 1160-A is dated February 1, 1934, and is addressed to Jenney & Lux, Inc. Did you personally receive the exhibit?

A. Which one is that?

Q. (Handing paper to witness).

A. (Witness examining paper) Yes, I recall it.

Q. Do you recognize Mr. Spring's signature? Have you ever seen him sign his name?

A. Seen him sign it? As a matter of fact, I think I saw him sign this particular letter.

Q. What were the circumstances?

A. He wrote it in our office.

Q. Did you write a letter to him prior to that?

A. Did we write a letter to him?

Q. Yes.

A. I don't think we wrote a letter to him.

Q. What was the occasion that you saw him sign his name?

A. Well, his office is about twelve miles away from us, and of course we had occasion to get together quite frequently about this matter. He had been doing a lot of
7388 business with us, and it was interfered with by the refusal of these companies to sell him. It was a serious matter to him as well as to us.

Q. He is a personal friend of yours?

A. Well, in a business way; only in a business way. We naturally came together quite a few times, and I think—I cannot say positively because of the length of time—but I think that that letter was written in our office at his request so that he could sign it. He wanted to put himself on record.

7389 Q. That is explained, then, that is one of the questions I was going to ask you. I noticed it is not written on his letterhead.

A. Not written on his letterhead.

Q. So that would explain that?

A. That occurred to me right away. That is my recollection.

Q. Had you had any contacts prior to February 1, 1934, with any governmental organization?

A. What sort of a governmental organization?

Q. I mean, that you complained about this?

A. Oh, yes, to the NRA and the—

7392 By Mr. Wooden:

Q. Mr. Miller, referring to exhibits marked 1160-A, C and D for identification, had you had prior conversations with the dealers involved in that correspondence regarding their situation that is described in the letters themselves?

A. Oh, yes, we had had numerous conferences about this situation described. It was a problem to both ourselves and the customers who wrote the letters. They wanted to handle our goods, but they were prevented from doing so.

Q. Did the letters state anything that had not been previously stated in your personal contacts with them?

A. No; they were a confirmation, really, of what they had already told us.

Q. Now, as to Exhibits 1160-B, E and F for identification, were those letters written following any previous personal contacts or conversations?

A. No, these letters simply arose—they were written to us simply to cover specific cases that are referred to in the letter. They really called for some explanation on their part, on the part of the writers of the letters.

Q. Not written at your suggestion, or how about that?

7393 A. No, they were not written at our suggestion. We may have merely told them as a matter of course to confirm something to us in writing which would be merely a confirmation of a verbal statement. In the case of the Crystal Sand & Gravel Company, it simply told us that they cannot use the balance of the cement which we had scheduled for them out of our supply, and their letter is merely an explanation of why they are not doing it. The other letter, of course—

Q. (Interrupting) That is 1160-E?

A. Yes.

Q. That is in regard to permitting Mr. Power to examine your books?

A. Yes.

7394 Mr. Wooden: Your Honor, at this time I will withdraw temporarily Exhibits 1160-A, C and D, but renew the offer as to 1160-B, E and F.

Mr. Leisure: May I ask the witness a question or two about 1160-B?

Examiner Norwood: Certainly.

By Mr. Leisure:

Q. Mr. Miller, I observe that that Exhibit 1160-B is dated September 6th, 1933. Was that letter written in reply to any letter from you?

A. I don't believe so. I haven't any record of any previous letter.

Q. Had you any telephone conversation with regard to it with the author of the letter before it was written?

A. We had many telephone conversations with the author of that letter about the subject matter of that letter. We had had a rather regular business with that firm and reserved a certain amount of cement for them which they were taking at rather regular intervals, and their letter is to explain why they were not going to go through with that schedule.

Q. That is, you were trying to sell them in competition with domestic cement?

A. We had been; we had been, regularly.

Q. And they wrote you this letter?

7395 A. And they wrote us the letter in explanation of their stopping.

7405 Examiner Norwood: I understand; but so far as the relevancy of this evidence is concerned, it is overruled.

And I see no reason why 1160-E and F should not be received.

As for 1160-B, that may be received on the matter of the effects, to show that this company, Jenny & Lux Incorporated, lost the customer here on account of this foreign cement, but not as proof of the statements here in regard to the American companies putting on the black list, at least, it is not admitted for that purpose at present, because the writer of the letter should tell us about that and be examined, I think.

So, as conditioned, the exhibits mentioned, 1160-B D and E are received in evidence and the objections are overruled.

Mr. Wooden: Your Honor, in view of that ruling, I desire to renew the offer of 1160-A, C and D, for the same purpose, of showing the effects of the respondents' acts that are already in evidence upon dealers and not for any other purposes.

Examiner Norwood: I presume the objection to these would be the same; and they may be received under the same conditions that 1160-B was received, not 7406 to be considered as proof of these statements as to these manufacturers blacklisting these dealers.

(COM. EX. 1160-A, B, C, D and E was offered and received in evidence.)

Mr. Wooden: Mr. Miller, tell us a little bit more about this telephone conversation that you had with Mr. Powers,

who was a Keystone salesman. Did he call you or did you call him?

The Witness: As I recall it, he called me.

By Mr. Wooden:

Q. State as near as you can what he had to say.

Mr. Leisure: Could we fix the time, approximately?

Q. Yes, fix the time as near as you can.

A. It must have been a date or a day after the time of those letters.

Q. Is that the letter—1160-E—that you refer to?

A. Yes.

Q. All right.

A. About July 26th.

Q. State as near as you can what he had to say?

A. He merely confirmed what the Watertown Builders Supply Company had told me already over the phone—

7407 Mr. Leisure: I object to the word "confirmed."

By Mr. Wooden:

Q. State what he said. I do not recall what was said. The substance.

A. The substance of it was that he confirmed what they told me.

Q. State as near as you can what Mr. Power had to say.

A. He told me that it was necessary for his company to find out whether the Watertown Builders Supply Company had discontinued handling imported cement, and that the Watertown Builders Supply Company had suggested that, to satisfy himself that they had discontinued purchasing cement from us, that he might come into our office and look into our records. I told him that this could not be done.

Q. Was there anything further in the conversation?

A. I do not recall if there was.

7408 Q. What domestic manufacturers of cement were in competition with Jenney & Lux in the territory where you did business?

A. Probably fifteen or twenty. Do you want me to name a few?

Q. Name as many as you can.

A. The Universal Atlas Cement Company, Lehigh Cement Company, Alpha Cement Company, Penn Dixie Cement Company, North American Cement Company, Keystone Cement Company, Whitehall Cement Company,

Lawrence Portland Cement Company, Coplay Cement Company, Vulcanite Cement Company, Hercules Cement Company. That is as far as I can go at the moment.

Q. How about Lone Star? Was that one?

A. Lone Star, yes.

Q. Was Edison one?

A. Lone Star and Edison, yes. And Glen Falls Cement Company—practically all of the cement manufacturers in the Lehigh Valley and the Hudson Valley. There is one cement manufacturer stated there which normally supplies the Boston market.

Q. That is the Lawrence Mill?

A. That is the Lawrence Mill.

Q. Did these various manufacturers that you named maintain sales representatives in Boston or thereabouts?

A. Yes, either in Boston or in the vicinity. I be-
7409 lieve a few of them have salesmen who do not reside there but make trips in, such as the Allentown Cement Company.

Q. Did you have occasion to become acquainted with some of those sales representatives at your warehouse or place of business?

A. Yes.

Q. Will you state what the circumstances were and what your contacts were with them?

A. I discovered several of the sales representatives for the domestic cement companies serving the Boston market, on different dates stationed outside of our warehouse gates. They were there, generally speaking, on consecutive days.

Q. What do you mean by "consecutive days"?

A. Well, the representative for one manufacturer would be at the gate of our warehouse stationed most of the day on, we will say, Monday, and on the following day, the representative of another company would take his place. Then the following day—

Q. (Interrupting) So that there would be only one man at a time?

A. There was only one man at a time from one company. In one or two instances, we found two salesmen from the same company. There seemed to be a rotation of representatives there. Those men were provided
7410 with sheets of paper, taking down the registration numbers of the trucks.

Q. What trucks?

A. Dealers' trucks who came to our warehouse of our customers.

Q. How did you know who these men were?

A. We checked them up through the Department of Motor Vehicles in Massachusetts.

Q. You mean you got the numbers of their autos?

A. The numbers of their cars.

Q. And checked them up?

A. Yes.

Q. Did you talk to any of the men?

A. Yes.

Q. Can you name any that you talked to?

A. Yes, I talked to a Mr. Law of the Lone Star Cement Company.

Q. What did you have to say to him?

A. I just asked him what he was doing there.

Q. Give us the whole conversation.

A. I asked him what he was doing there with a sheet of paper taking these numbers of the trucks down, and I asked him whether he was one of the watching system that was stationed at our warehouse. I told him that I had heard from various of our customers that there was a watching system established there—

7411 Mr. Leisure: (Interrupting) I object to what he heard from various of his customers.

Mr. Wooden: It is part of the conversation that he had with the representatives of the Lone Star.

Examiner Norwood: That was information that you received from your customers?

The Witness: Yes, sir.

Examiner Norwood: And you acted on it and verified it?

The Witness; Yes.

Examiner Norwood: Objection overruled.

By Mr. Wooden:

Q. Go ahead with your conversation with Mr. Law.

A. I asked him if he was taking down the number of the trucks entering our yard.

Q. Dealers' trucks, you mean?

A. Dealers' trucks coming out with cement. He said he was. He did not volunteer a great deal of information.

Q. Did you ask him why he was doing it?

A. Yes, I did. He said that it was part of his job.

Q. Did you talk to any other sales representatives of domestic cement manufacturers?

A. Yes, sir, I talked to Mr. Murray.

Q. Who is he?

A. I think he was with the Atlas Company.

7412 Q. Universal Atlas?

A. Universal Atlas Company.

Q. What was your conversation with him?

A. I merely asked him whether he was taking the numbers of the trucks down. He had the paper. He was accompanied by another representative of the same company.

Q. Do you know who that was?

A. I think it was Mr. Campbell.

Q. How did you find out those gentlemen's names?

A. In that case I asked him his name. I told him my name.

Q. Did you ask him whom he was connected with?

A. Yes.

Mr. Hershberger: Was this in Boston you are speaking of?

The Witness: Yes, East Boston.

Mr. Hershberger: When was this?

A. In the summer of 1933. Would you like the specific

The Witness: In the summer of 1933. Would you like the specific date of that last one?

Mr. Hershberger: If you have it.

The Witness: I think I have it here (examining paper). June 30th, 1933.

Mr. Hershberger: That was the date you talked with whom?

The Witness: Mr. Murray.

7413 Mr. Hershberger: M-u-r-r-a-y?

The Witness: Yes, George Murray.

By Mr. Wooden:

Q. Did you make a record at that time of any of your conversations with these sales representatives?

A. I made no record. There was not very much to record. I simply satisfied myself that they were keeping a record of our trucks or the trucks of our dealers who were entering our yard and going out with cement, and I did keep a record as far as we could of the salesmen who were stationed outside of our warehouse.

Q. Did you make a record at the time of the names of the salesmen as you ascertained them?

A. Yes, sir.

Q. Were there any other cases besides the case of Mr. Murray and Mr. Campbell where you got their names directly from the men themselves?

A. Yes, there was almost a daily record from June 28th through a part of July and in August.

Mr. Leisure: What year?

The Witness: 1933.

By Mr. Wooden:

Q. Do you have a record there of the names of salesmen that you discovered were watching your dealers' trucks?

A. Yes, I have. I have at least a partial record. 7414 That is a memorandum we kept in the office (indicating paper).

Mr. Wooden: I ask to have that marked Commission's Exhibit for identification 1161.

(The document referred to was marked "Commission's Exhibit 1161 for identification.")

By Mr. Wooden:

Q. What is the paper I show you marked Exhibit 1161 for identification?

A. That is the record we made in the office of the salesmen of the cement companies whom we had found stationed at our warehouse gates.

Q. Does it contain the dates on which you found each of them so engaged?

A. Yes, it contains certain dates that we discovered certain of them at our warehouse.

Q. Now, referring to a note here with regard to the Lawrence Cement Company salesman, can you say whether or not you verified his identity by questioning him?

A. I don't recall whether I interviewed that party myself. Our warehouse man had to take over part of that job; I could not be there every day myself. I did see a number of those people myself, though.

Q. Did you have the registration number of the cars looked up?

A. Yes. They were confirmed by the Registry
7415 of Motor Vehicles of the Commonwealth of Massachusetts.

Q. And you have those on this paper marked 1161 for identification?

A. Yes. The registration numbers of the automobiles are on there.

Q. Will you vouch for the accuracy of the information contained on that sheet of paper?

A. To the best of my knowledge and belief. We checked it either by letter or by telephone.

Mr. Wooden: I offer the list in evidence.

By Mr. Wooden:

Q. While Mr. Leisure is looking at it, I would like to ask this further question. Was the information contained in that paper shown as of the time this watching was going on?

A. On that paper?

Q. Yes.

A. That is merely a list of our day to day information that we got at the time and later compiled in the form of a summary of the record.

Q. At that time?

A. At that time.

Mr. Leisure: May I ask the witness a question about this list?

Examiner Norwood: Certainly.

7416 *Preliminary Examination by Mr. Leisure.*

Q. How was the list made up, Mr. Miller? Are these license numbers which you yourself saw and had checked with the Massachusetts Motor Vehicle Department?

A. Our office checked that or I checked part of it myself.

Q. When you say your office, who besides yourself undertook this work?

A. The bookkeeper in our office.

Q. Your bookkeeper?

A. Yes.

Q. And what is the name of your bookkeeper?

A. His name is Hartnett.

Q. His name is what?

A. Hartnett, H-a-r-t-n-e-t-t.

Q. The first one you told us about, Mr. Law, you yourself checked that?

A. Yes, I saw Mr. Law.

Q. And did you check that license that is given there?

A. Yes.

Q. As being there on June 28th?

A. Yes, sir.

Q. And the next one is Walter Lymburn. Did you yourself check that one?

A. I don't recall whether I checked that particular party.

7417 Q. How did it get on this list?

A. On that list? It was put on that list by our office, by our common efforts in the office in our company.

Q. And that would have been either yourself or the bookkeeper?

A. Either the bookkeeper or our warehouseman who went out and interviewed some of these men himself.

Q. What is his name?

A. Smuts.

Q. How do you spell it?

A. S-m-u-t-s.

Q. I notice there are two names here opposite the Lawrence Portland Cement Company left blank. How did that happen?

A. I don't know.

Q. Was that checked with the Motor Vehicle Department as the others were?

A. I believe that we have another record that gives the name of that man. I cannot say from looking at this record, which is five years old, as to whether this registration checked against the name of the driver of the car or against the Edison Cement Corporation itself.

7418 By Mr. Leisure:

Q. I notice the last date on here, Mr. Miller, is August 7th and the first date is July 28th. When was this document prepared?

A. Some time after August, after the last date. It was merely a summary.

Q. In 1933?

A. Yes. A summary of the information we gathered together, I believe.

Q. And was this document used before the NRA?

A. No. I probably had that with me at the time that I appeared before the NRA hearing.

Q. That was the Darrow Board that you speak of?

A. No, I don't believe the Darrow Board.

Q. Was it the NRA itself?

Mr. Wooden: It was the Code Authority.

A. It was the Code Authority. Before Chairman Sunderland. That was among data which I had with me at that time.

Mr. Hershberger: May I ask a question, please?

Examiner Norwood: Go ahead.

Mr. Hershberger: You testified that there was a man by the name of Mr. Murray that you believed was with Mr. Campbell. I notice that that name Campbell is not on this list. Does that incline you to change your testimony
7419 in any way about Mr. Campbell being there with Mr. Murray?

The Witness: No, I recall that Mr. Campbell, Mr. Campbell was with him. This is merely something that we made up from our own records. We did not attempt to make any conclusions in this list. We simply put down the name of the man who drove the car, I think. The omission of him there, I don't think—I feel quite certain he was with him on that occasion. It might have been on another occasion.

Mr. Hershberger: I don't believe he is mentioned again.

The Witness: He is not mentioned again? There are some there that might have been repeated.

Mr. Leisure: I am going to object to this exhibit, your Honor, except those portions which the witness can vouch for himself. There is no name appearing on some of these, and there is a name of a cement company appearing after it. He has said he talked to Mr. Law and he talked to Mr. Murray. I shall not object to those. As to the rest of the exhibits, it is entirely hearsay.

Mr. Wooden: I would like to ask the witness a question.

Examiner Norwood: Yes.

7420 By Mr. Wooden:

Q. Do I understand, Mr. Miller, that as to the two companies, Lawrence and Edison, as to which there is a blank where the salesman's name usually appears, that those cars were registered in the names of those two companies?

A. I cannot say at this date, as to whether those cars were registered in the names of the cement companies or in the name of the salesman.

Q. At any rate, you did not have the name of the salesman at that time?

A. Apparently not.

Q. You vouch for it as one of your office records, made up at that time for use in your business affairs?

A. I do.

Mr. Leisure: What business affairs?

Mr. Wooden: In the business of selling and trying to sell foreign cement.

Mr. Leisure: The record was made up for use in a proceeding, was it not, Mr. Witness?

Mr. Wooden: I don't think so.

Mr. Leisure: Let us ask the witness.

Examiner Norwood: Off the record.

(Discussion off the record.)

Examiner Norwood: Do you testify to the accuracy of the information contained on this Exhibit 1161?

7421 The Witness: The large part of it had been verified by me personally.

Mr. Hershberger: Which part of it was verified by you?

The Witness: I cannot recall.

Examiner Norwood: That is, part of it is made from your own observations and the other part from those?

The Witness: Those, supplemented by observations. And checking, which was done under my supervision, in collaboration with me; in our office.

(COM. EX. 1161 was offered and received in evidence.)

By Mr. Wooden:

Q. Did you take any pictures of any of the parties that you discovered went in your dealers' trucks?

A. Yes, we took a few pictures of the salesmen.

Q. Can you state who they were?

A. I have them. Several pictures were taken by men connected with our company, by salesmen who were posted outside the gates of our warehouse.

Q. I notice in Commission's Exhibit 1161, under
7422 the name of the Lehigh Company, Mr. Mathewson, "a photo of this taken at our warehouse."

A. That is just a record that a photograph had been taken.

Q. What photograph was taken in connection with Lehigh?

A. On August 3rd there were two pictures taken of Mr. Mathewson's car parked in front of our warehouse.

7423 Q. Did you talk with Mathewson?

A. No, I did not talk to Mathewson. One of our men in the warehouse named Campbell talked to him.

Q. Who took the pictures?

A. Captain Smuts, a man employed in our warehouse.

Q. And did you take any other pictures?

A. There were other pictures taken. I don't know how many. I only had two more here.

Q. Is the one you have already handed me—is that the Mathewson picture?

A. The ones that I have already handed you—the one showing the number of the car there is the Mathewson picture, and according to a record we have here, the other one is too.

Q. What is the picture marked 1162-A for identification?

A. The picture marked 1162-A for Identification is a picture of the car of Mr. Mathewson of the Lehigh Company, with Mr. Mathewson sitting at the wheel.

Q. How do you know that he was he?

A. I did not personally know that it was he. According to a record I have here, it turned out to be Mr. Mathewson, and I think you will find a record of the registration number shown in the picture checks up.

Q. With the list, 1161?

7424 Examiner Norwood: Was this one detail in your identifying these men?

7425 The Witness: Merely a detail in identifying the men.

Examiner Norwood: Off the record.

(Discussion off the record.)

Mr. Wooden: I should like to have this other photograph marked Exhibit 1162-B for Identification.

(The photograph is marked "Commission's Exhibit 1162-B for Identification.")

By Mr. Wooden:

Q. What is Exhibit 1162-B?

A. That is a picture turned over to me by a man in our warehouse, which shows a car standing at the gate of our

warehouse, registry number 26,353, on August 7th, which, according to the Massachusetts Registry of Motor Vehicles was either registered in the name of the Hercules Cement Company, or in the name of Walter Linburn, representing the Hercules Cement Company.

Mr. Wooden: All right; your Honor. I will shorten this. I will make the offer of 1162-A and B, the pictures.

7426 Examiner Norwood: (Interrupting) As I understand it, the Massachusetts Bureau certified that that was this man's car?

Mr. Leisure: He cannot prove what the Massachusetts Bureau did. The way to do that is to call the Massachusetts Bureau here and have them prove it, if your Honor thinks it is sufficiently important to have these two pictures in evidence.

Examiner Norwood: I understand, but the Massachusetts Bureau did not say that the owner of the car was in it, did they?

Mr. Leisure: They did not.

Examiner Norwood: Then you will have to identify those people.

Mr. Leisure: There is no showing of any kind to possibly allow the photographs in evidence.

Examiner Norwood: You will have to identify the photographs of those people by someone who knows them.

7427 Examiner Norwood: The car numbers are given on this exhibit?

Mr. Wooden: Yes.

Examiner Norwood: Did you tell us what year that was taken, Mr. Witness?

The Witness: Yes, 1933. I believe that picture was taken August 7th, that last one of Mr. Lynburn.

Mr. Paust: May I ask if you were present when that was taken?

The Witness: No.

7428 Examiner Norwood: Objection overruled, the exhibits are received as marked.

Mr. Leisure: I want to state a further objection on the record to these pictures being offered in evidence. As I said before, it is ridiculous, and it is ridiculous for the reason that this witness might bring in a piece of rope or a piece of a tire or a piece of an automobile to try to cast some kind of suspicion around this situation where no sus-

picion rests at all, and I think it is an improper procedure to offer pictures here when the list has been offered in evidence, and there is no occasion for the photographs in any way.

Examiner Norwood: Does the counsel offer to stipulate to that effect?

Mr. Leisure: Stipulate to what effect?

Examiner Norwood: That these are the parties and the cars are as stated?

Mr. Leisure: There is no occasion for a stipulation. The witness' own testimony is to the effect that when he spoke to the people, they told him immediately who they were and what they were doing and why they were there.

7429 Examiner Norwood: I cannot follow the counsel on their being without some value in evidence, and they have already been received.

(COM. EX. 1162-A and B was offered and received in evidence.)

7430 By Mr. Wooden:

Q. Mr. Miller, was there any one domestic concern that you can name which did not follow this policy of not selling dealers who handled foreign cement?

Mr. Leisure: I think that question is just the wrong way around. If the witness knows of any manufacturers that did, he can tell us, but it would not be proper for him to try to say that there was one that did not.

Examiner Norwood: If he can testify that of his own knowledge, he can state whether or not he found any exceptions among those manufacturers, that is, that he in-

7431 vestigated and tried to find out and failed to do so.

Mr. Wooden: That is all I am expecting.

Examiner Norwood: Yes. Answer that of your own knowledge, Mr. Witness.

A. I do not know of any cement manufacturers who, at the time that we have referred to in my last testimony —that is what I assume that you mean, don't you, in and around August and July, 1933?

Mr. Wooden: Yes.

A. (Continuing) I do not know of any cement manufacturer that made any exception to the policy adopted by those manufacturers referred to this morning.

Mr. Leisure: Your Honor, I move to strike that answer out.

Here is a witness attempting to take in all the manufacturers in this country, merely by saying that he does not know of any one of them that did not adhere to that policy. I submit that is improper.

Examiner Norwood: Do you know of your own knowledge that any of them had adopted such a policy?

The Witness: You mean a policy of refusing to sell?

Examiner Norwood: Yes. Aside from the fact that you knew that many of them did refuse to sell.

The Witness: Of course, no cement company ad-
7432 mitted to me that they did.

7433 By Mr. Wooden:

Q. Was there a brand of domestic cement sold in your sales territory during that time known as the Pioneer Brand?

A. Not at that time; not until later.

Q. How much later?

A. I think the Pioneer did not get on the market until either the very end of 1933 or until some time in 1934.

Mr. Leisure: Just a minute. I would like to know what time "during that time" covers. I would like to know when it started and when it ended and what this question intends to cover. "During that time" I am not clear on.

The Witness: Maybe you had better clarify your question to me.

By Mr. Wooden:

Q. What do you mean by "during that time"? When you said that the Pioneer Brand had not been on the market during that time?

A. Oh, during the time that we observed the men at our warehouse. I can fix the time that way. So far as I know, there was no Pioneer Cement then.

Q. Did you see the manufacturer of the Pioneer Brand?

A. The manufacturer of it was in the beginning the Allentown Cement Company, as I understand.

7434 And later after it was sold by the National Portland Cement Company.

Q. Of Philadelphia?

A. Yes.

Q. Was it sold by the National even during the period manufactured by Allentown?

A. I understand it was. I have no official knowledge.

Q. Was that brand of cement sold to your dealers who were handling imported cement?

A. It was eventually, but not in the summer of 1933.

Q. Was it sold to your dealers at a time when other domestic cement manufacturers were not selling?

A. Yes.

Q. Were your dealers aware of the existence of this watch upon the trucks going out of your warehouse?

A. They told us so.

Q. Did you inform them or did they inform you?

A. The dealers?

Q. Yes.

A. The dealers told us about it in the first place.

Q. Was that how you first learned about it?

A. Yes, because there would not have been anything in merely seeing a car in front of our warehouse—that would not be anything to excite our curiosity. There are plenty of cars at all times. The dealers told us
7435 about this watching system being kept up, and we would check up on it.

Q. Just how much did the salesmen that you saw and interviewed outside of your warehouse volunteer in the way of information as to who they were and what they were doing?

A. Well, they really did not volunteer anything. We had to ask them, unless they recognized—in one case I think the fellow recognized me and I knew him, so he could not do much about it.

Q. What case was that?

A. Mr. Murray.

Q. Of the Universal Atlas?

A. Yes. The man that had Mr. Campbell with him.

Q. Can you state whether or not you used the license numbers of the cars to get the names and then asked the people if they were the people covered by the license?

A. Yes. After learning of this watching system being kept at the gates of our warehouse either by observation of myself or someone connected with our company, we made a practice for a while of going outside to see who was outside, and the procedure would be something like this. They would see a car that would appear to be occupied by a man keeping a record on a sheet of paper, and someone in our office would go to the phone and call up

the Registry of Motor Vehicles and find out if possi-
7436 ble the owner of the car. If it turned out to be that of a cement manufacturer, the man in our warehouse or myself or whoever as the case might have been, would go out and identify the man.

Q. And ask him if he were so and so?

A. If he were so and so.

Q. What proportion of your dealer business handling foreign cement did you lose during that period of time?

A. I am really unable to say now, but I would estimate it at about half.

7437 Q. Half in volume?

A. More than half in volume, because the biggest users of cement were the very dealers whose business was extensive, naturally, and who needed several domestic brands, brands to supply various jobs.

Q. Were there other dealers than those you have named today, who also discontinued buying from you, giving the same reasons as those you have named?

Mr. Leisure: I object to that, unless the witness specifies who the dealers were. There is no way that we can meet that kind of testimony, unless the witness is able to specify who the dealers were.

Mr. Wooden: I would be glad to ask him that.

Examiner Norwood: The objection is overruled. You can bring that out.

A. I have forgotten just what dealers I might have testified to today, thus far, so I would have to know whom I named, to mention others.

Q. You have named half a dozen, including Spring and Watertown and Chelsea.

A. Oh, yes. There was the J. Massirman Company.

Q. Give the address.

A. Everett Avenue, Chelsea. The Waltham & Lyman Cement Company, of Waltham. Waldo Brothers Company—

Mr. Leisure: Where are they located?

7438 The Witness: South Hampton Street, Roxbury; that is part of Boston.

There may be, there are, others. I just cannot recall their names.

Q. How about Widdemore?

A. Yes, the Widdemore Company, yes, in Roslindale; that is part of Boston.

Q. You say there are others; only you cannot recall them now?

A. F. Diehl & Sons, Wellesley. I cannot recall any others at the moment.

Mr. Wooden: I have not anything further.

Examiner Norwood: Cross examine.

Cross Examination by Mr. Leisure.

Q. Mr. Miller, I think you said your company started in the business in 1925?

A. Yes, sir.

Q. Is that a corporation or a partnership?

A. A corporation.

Q. Where was it incorporated?

A. In Massachusetts.

Q. And you joined them soon after they started business?

A. Soon after, yes, sir.

7439 Q. And what has your experience been prior to that? Had you been in the cement business?

A. No, I had been in the steamship business.

7441 Q. You mentioned the sale of foreign cement and other articles which you imported. What percentage of your business is the importation of cement?

A. At the present time?

Q. Well, at any time.

A. At the time that we were dealing with this morning, our business in 1933, was, I guess, over 99 per cent cement. Now we handle other materials.

7445 By Mr. Leisure:

Q. When you buy or sell in Boston, do you buy it in Boston or do you buy at Antwerp?

A. We buy it in Boston.

Q. You buy it in Boston?

A. Yes, we buy it in Boston.

Q. And is the price that you pay for it the quoted price in Boston, or do they quote you an Antwerp price?

A. I suppose in the last ten years it has been a Boston price.

Q. Now, you said you had considerable difficulties when you first started, Mr. Miller. I think you said one of the difficulties was delayed shipments. Is that right?

A. No, I merely mentioned that as a general difficulty in selling imported cement; in fact, you cannot get shipments here in two days the same as you can with domestic cement.

7446 Q. Yes, and didn't you say that starting off as a new concern you had certain obstacles to overcome?

A. Well, not so much as a new concern.

Q. All right. Did you have any obstacles when you started doing business in this country at all?

A. Of course; of course.

Q. Yes. Was one of your obstacles that the Government buyers did not want to buy foreign cement when they could buy domestic cement?

A. No. We were not trying to sell cement to the Government.

Q. You did not want to sell to the Government?

A. No, we did not have any expectation of selling to the Government.

Q. Despite the obstacles that you mentioned on direct, you did sell large quantities of cement, didn't you?

A. Quite large, over a period of years.

Q. Was this because you were able to buy the cement cheaper and sell it cheaper?

A. The question of the price had a great deal to do with it.

Q. Yes?

A. It had to.

Q. Yes. And are you familiar with the cost of manufacture in Belgium?

7447 A. Reasonably.

Q. Are you familiar with the labor costs there?

A. Yes, yes.

Q. And you were able to buy your cement cheaper in Belgium than you were here, were you not?

A. Of course, or we would not have bought it.

7455 Q. Now, these letters that were offered in evidence this morning, Mr. Miller, 1160-A, B and D; did you have anything to do with the writing of those letters? By that I mean, did you suggest their contents in any way?

A. No, not specifically. The matters about which these letters were written constituted a subject that was in our minds constantly. Our business was being hurt, our customers' business, the dealers' business, was being hurt, it was being interfered with. It was naturally something that

we would be talking about. I may or may not have suggested to one or two of these dealers to confirm to me what they had already told me. In this case here, the Spring letter, I think I mentioned this morning that in my recollection, I believe that was written in our office as a matter of convenience to Mr. Spring who happened to be in there at the time.

Q. You wanted to get the letters, did you not, in order that you might use them in some proceeding, didn't you?

A. We were glad to get the letters.

7458 Q. At this hearing before the N.R.A. Code, did you testify at that time that you knew nothing of a so-called Black List being promoted by the cement manufacturers?

A. As I recall my testimony, I only admitted that I did not know of the actual existence of it, the same as I testified a few minutes ago, I think, that I did not know of any—that I could not positively state from any ad-

7459 mission of the manufacturers what they were doing. I only knew about the black list from what the dealers told me and from what appeared to me to be good evidence. The dealers told us that they had been informed by various salesmen that there was a black list.

Q. I am talking about what you knew. You testified that you did not know of any yourself of your own knowledge.

A. Did I testify to that?

Q. Did you?

A. I don't think I testified except to that extent. I admit now that I don't know of any black list; I mean, nobody has ever shown it to me.

7460 Q. Then you don't know of any concerted activity among the dealers with respect to this problem?

A. Do you mean the dealers against the cement companies to combat this thing?

Q. Yes.

A. I only recall a statement by Mr. Cooke at Kansas City at some dealers' meeting in Washington at which he complained about it.

7461 Q. You did not know anything about it, although you were a dealer? You did not know anything about it at the time that it was going on?

A. About what?

Q. Well, let me ask you this: Do you know that the Federal Trade Commission has recently handed down a Cease

and Desist order against the dealers for cooperatively conspiring against the cement manufacturers? Do you know anything about that now?

A. I did not know that they had, against the dealers, for conspiring against the cement manufacturers, no.

Q. What did you know about it?

A. Well, I cannot recite the Cease and Desist order. I know of one that was handed down some time ago, yes.

Q. Did you know anything about it?

A. Yes.

7465 *Cross-Examination by Mr. Zimmerman.*

7467 Q. The radius that you said you covered was about fifty miles from Boston, assuming Boston to be like the base of a fan?

A. During what period are you speaking about now?

Q. Well, I think we might go back to the first, or at any time—you can vary it from that situation, at any time. Just tell us about it?

A. Over a long period, since we have been in business, the great majority of our cement sales were within the Boston Metropolitan area, within a very short trucking distance. At times, however, it has varied somewhat, so that the trucking has been done inland, beyond that limit where you mentioned, fifty miles.

Q. That was the greatest limit, approximately?

A. As a rule, yes. There are occasional instances where a dealer has some trucking connection that makes it of special advantage to him to haul cement, whereas it might not apply to another dealer located even nearer to Boston, within a shorter range.

7478 *Redirect Examination by Mr. Wooden.*

Q. Mr. Miller, if the price of the domestic cement increased, would that tend to increase imports of foreign cement?

A. If the price of domestic cement increased?

Q. Yes.

A. I presume that it might, although I believe that the foreign people might raise their price too. I don't believe that it would result in an increase beyond a certain amount, though, of sales.

Q. Did the price of domestic cement in the Boston area increase since 1934?

A. There have been several changes, and I cannot say immediately whether the net change was up or down. There have been several changes.

Q. Can you say, Mr. Miller, whether there was an
7479 increase in the domestic price in the Boston area in 1934 or 1935?

A. I cannot recall. There have been several price increases and decreases, and I cannot, I haven't anything to refresh my memory about the dates.

7484 *Recross Examination by Mr. Leisure.*

Q. When were these practices of which you com-
7485 plained discontinued? When did they cease?

A. I believe some time during the year 1934 or probably early 1935. There was not any fixed date. They just disappeared.

Q. But you can trace them back to 1934?

A. Yes, about that.

Q. And you have had no complaints with respect to that in 1938?

A. No.

Q. Or 1937?

A. No.

Q. Or 1936?

A. No.

Q. It lasted just about one year, then?

A. Yes, I would say approximately a year or a year and a half. It went through the year 1933, either part or all of the year 1934 also—I cannot recall which.

Mr. Leisure: That is all.

7491 THOMAS J. HARTE, was produced as a witness on behalf of the Commission and, having first been duly sworn, was examined and testified as follows:

Mr. Zimmerman: On this 1159-A, which is one of the exhibits which I believe the Examiner has held over to pass upon, that is, a letter dated the 28th of May, 1931, addressed to Frank H. Smith, president—I don't know of what—

Mr. Wooden: Lawrence Portland.

Mr. Zimmerman: I see it is signed by J. H. Ackerman. A five page letter, and counsel for the
7492 Commission have offered certain segregated portions of it, having drawn a red line around those portions which they have offered.

I object to the admission of the letter in evidence now, specifically upon the additional ground that much of the matter that has been left out is pertinent to the issues in the case, and it would be highly improper to offer only the segregated portions. They are connected up so that it is important.

For example, it is apparent that the paragraph on page 3 that starts out "We are not getting many new contracts simply because we are not able to take them over in New York State except in a very few instances, due to the low mill net."

For example, if you look at Paragraph 8 of the complaint, sub-paragraphs B and D, without reading all the assertions of the letter at this moment, I want to call attention to those particular paragraphs of the complaint.

"(b) In order thus to eliminate price competition, producing respondents' base prices are based high enough to permit them often to defray much higher amounts of actual freight."

They talk about high prices, high base prices. Now, the base price as they refer to it is synonymous with the term used in the industry as the mill base,
7493 or maximum mill net.

This has a very direct bearing upon this question, this paragraph that I have referred to.

They go on and say:

"We have not yet closed any real jobs in New Jersey with the exception of two through Tidewater, and as you know, on both of these we made a concession of 5 cents. I authorized Landis to go and see Mr. Ellis, who has approximately 75,000 to 100,000 barrels of cement yet to purchase, and Mr. Ellis laughed at Landis when he offered him 5 cents below the present market. Mr. Ellis claimed that he was buying at 25 cents below the market before the last drop, or that the price that was given to him some time ago is still 10 cents less than today's market.

"I have told Landis to take not less than 25,000 barrels

at a cut of 10 cents, or, in other words, to meet the price which Ellis now has."

That is all very material to the question of competitive pricing. You will observe, for example, in sub-paragraph d of Paragraph 8 of the complaint, they say:

"Even in times of great depressed demand, respondent combination has tended to eliminate the strong trend towards lower prices which normally operates at such times."

7494 Now, here in this exhibit there is direct evidence that that charge in the complaint is not well founded. Yet they offer the exhibit expunging and eliminating certain portions, which tend to show the contrary of the complaint.

Examiner Norwood: It might be worth while for the respondents to offer that.

Mr. Zimmerman: It is not essential that the respondents should offer any portion of an exhibit offered, if the Examiner is satisfied that those portions which are eliminated by counsel for the Commission are relevant and pertinent to the issue. Then you should sustain our objection to the exhibit, unless they offer those parts which we show are relevant and material.

Mr. Wooden: This just illustrates what we get into when we make any effort to offer portions of a document, in accordance with so-called Rule XIX. I had no objection in the beginning and have none now to that entire document going in.

Examiner Norwood: I think that ought to settle it.

Mr. Zimmerman: That does not waive our other objections made to the exhibit.

Examiner Norwood: Yes.

7495 The objections are overruled, and the entire document—consisting of 1159-A, B, C, D and E, is received in evidence.

(COM. EX. 1159-A, B, C, D and E was offered and received in evidence.)

7496 New York City, N. Y.
June 2nd, 1938.

7497 Mr. Wooden: Your Honor, before going ahead with Mr. Harte, I should like to have some statements for the record as to the information which was requested of Mr. Neylan of the Lone Star Company, and to ascertain what of that information is available now and when the remainder will be.

Mr. Leisure: While we are on this subject, your Honor, there are several matters here that I would like to clear up that we have been asked before.

I have had here for some time a letter from Mr. Smith of the Volunteer Company to your Honor forwarding certain matter, and Mr. Smith has asked that his letter to your Honor be made a part of the record, and I will turn over the documents to Mr. Wooden. That is material that Mr. Wooden called for, and Mr. Smith was here the better part of the day to put them in, but there did not seem to be any break and he left. That was a couple of weeks ago.

7498 (The documents produced are marked "Commission's Exhibits 1163-A to F for identification.)

(Discussion off the record.)

Examiner Norwood: The letter may be marked for identification as "Respondents' Exhibit 24-A, B and C for identification".

(The same is so marked.)

7499 Mr. Wooden: There is no objection to Respondents' Exhibits 24-A, B and C. And I offer at the same time 1163-A to F, inclusive, for identification, as Commission's Exhibits.

Mr. Leisure: No objection.

(COM. EX. 24-A, 24-B and 24-C was offered and received in evidence.)

(COM. EX. 1163-A, B, C, D, E, F was offered and received in evidence.)

Mr. Leisure: Also I have had here for some time, your Honor, four documents which the Lone Star Company have sent to us, which they found in their Indiana Office, in further compliance to the subpoena of January 24th, 1938; and I think they stated if they found anything further at any time they would turn them in; so they sent them to

us and asked what to do about them, and I told them to hand them in.

Mr. MacIntyre: Did they come from the files of the Lone Star Company of Indiana?

Mr. Leisure: That is my understanding.

Mr. Wooden: I suggest that they be numbered for identification and handled as before.

7500 Examiner Norwood: Let them be marked for identification 1164-A, B, C and D.

(The papers referred to were thereupon marked Commission's Exhibits 1164-A, B, C and D for Identification.)

Mr. Leisure: With respect to the request of Mr. John F. Neylan of the Lone Star Cement Corporation, he was asked to produce Lone Star statement of its distribution policy as of February 22, 1935, and any revisions of that policy. I have here the originals and photostats of statements and revisions from February 22, 1935, to date, and I am not producing those as requested by Mr. Wooden. They may be marked for identification.

7501 (The documents referred to were marked "Commission's Exhibits 1165-A to Y, for identification.")

Mr. Wooden: I would like to offer at this time Exhibits 1164-A to D, inclusive.

Mr. Leisure: That is under the subpoena, and we make the same objection to those exhibits that we have heretofore made to the subpoenaed documents.

(COM EX. 1164-A to D was offered and received in evidence.)

Mr. Wooden: I would also offer at this time Exhibits 1165-A to Y for identification, subject to possible withdrawal of such of them as appear to be superfluous or duplicated in any way.

Mr. Leisure: We have no objection, your Honor, provided the offer is confined to the one company and is not binding on the other respondents unless it is connected in some way or it is shown that they had some knowledge of it.

(COM. EX. 1165-A to Y was offered and received in evidence.)

7502 Mr. Leisure: I have also produced in response to Mr. Wooden's request a list of prices as originally established by the Lone Star Company effective on March 10, 1937, and applicable to the District of Columbia and points in Virginia and Maryland.

(The documents referred to were marked "Commission's Exhibits 1166-A to D for identification.")

7503 Mr. Wooden: I offer these papers, just described by Mr. Leisure, and marked 1166-A to D, inclusive, for identification.

Examiner Norwood: Those are produced by the Lone Star Corporation?

Mr. Leisure: Yes, as requested by Mr. Wooden, of Mr. Neylan.

Mr. Zimmerman: No objection.

Mr. Hershbereger: No objection.

(COM. EX. 1166-A, B, C, D was offered and received in evidence.)

Mr. Leisure: I have here information concerning the application of special rates in the Metropolitan area of New York. This information was requested by Mr. Wooden, on page 6599 of the record, and I am producing that also.

Mr. Wooden: Special prices, do you mean, when you say special rates?

Mr. Leisure: It says "rates," so I used that term.

(The papers produced are marked for identification "Commission's Exhibits 1167-A and 1167-B for identification.")

Mr. Wooden: I offer the papers just produced by
7504 Mr. Leisure, and which have been marked 1167-A and B for identification.

7505 (COM. EX. 1167-A and B was offered and received in evidence.)

Mr. Leisure: Further in compliance with Mr. Wooden's request, I am producing here information explaining the basis of Lone Star's quotations for delivery at certain points in Virginia in connection with the Virginia Highway Department bids of June 25, 1937.

(The documents referred to were marked "Commission's Exhibits 1168-A and B for identification".)

Mr. Wooden: The papers just produced have been marked Commission's Exhibits 1168-A and B for identification, and I offer them for the record.

Mr. Zimmerman: No objection.

Examiner Norwood: Received as marked.

(COM. EX. 1168-A and B was offered and received in evidence.)

Mr. Wooden: Is that all you have from Mr. Neylan?

Mr. Leisure: That is all I have for the moment from Mr. Neylan.

Mr. Wooden: May I ask what the status is as to
7506 the list of base prices and the material regarding production and distribution at each plant?

Mr. Leisure: The base prices will be in in another day or so, and the other material I do not know at the moment.

Now, when Mr. Twamley of the Coplay Cement Manufacturing Company was on the stand, Mr. Wooden asked him to produce a list of arbitrary prices used by the company in the New York Metropolitan area, and in the Long Island territory. We have produced those prices.

Examiner Norwood: Mark them Exhibit 1169-A to J for identification.

(The documents referred to were marked "Commission's Exhibit 1169-A to J for identification".)

Mr. Wooden: The papers just described by Mr. Leisure have been marked Commission's Exhibit 1169-A to J for identification, and I offer them in evidence.

Mr. Leisure: No objection.

(COM. EX. 1169-A to J was offered and received in evidence.)

7508 THOMAS J. HARTE, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

I am vice-president in charge of sales of the North American Cement Corporation and have been in that capacity since the latter part of 1931.

North American has plants located at Howe's Cave, New York, Catskill, New York and Security, Maryland.

The latter plant is sometime referred to as Hagers-
7509 town. The Howe's Cave plant has a full capacity of 1,200,000 barrels per year; the Catskill plant 1,400,000 at full capacity, and the Security about 1,800,000 at full capacity making a total of about 4,400,000 barrels.

7509 Q. Is the Catskill mill—does it operate on the basis of the so-called Hudson Valley base?

A. Well, I may explain it this way, if I may: I have

heard mill base discussed a lot. Within our own organization we do not call it a mill base or a base mill. We go by a mill net. That is the way we follow it through our company. You could throw the mill base away as far as I am concerned personally. What I want to know is the amount of money that we net at a plant.

Q. That is the most important thing to you?

A. That is the most important point to our com-
7510 pany and our stockholders.

Q. That is, the whole of the amount that you receive for the sale of cement?

A. That is correct.

Q. That is the only thing that you have to check with against your costs, to know whether you are making or losing money?

A. I wouldn't quite put it that way.

The Witness: May I have that question repeated, please?

Examiner Norwood: Read it.

(The question is read by the reporter).

The Witness: I don't believe I could answer that question. I don't think I understand it.

By Mr. Wooden:

Q. Well, the mill net, you told us, is the total amount that you receive for the sale of cement?

A. That is correct.

Q. What else can you compare with your costs, to know whether you are making money?

A. Probably I am confused, but I cannot get costs in with the mill net at the moment. Maybe I can answer your question this way: by saying the only way we know about the mill net would be to compare the prices we find in the field, competitive prices.

7511 Q. After you establish what your mill net is in the actual sales, that is the only basis that you have to determine whether that is a profitable or unprofitable sale?

A. No, we cannot establish the mill net until after we actually consummate the sale.

Q. I understand that; but after you have done that, that is the only basis you can figure what the mill net is before you consummate the sale?

A. Yes, if we know the destination point.

Q. After you have deducted the freight?

A. Yes.

Examiner Norwood: When you have the mill net, and then subtract your cost, does that show you your profit?

The Witness: If we have any profit.

7512 Q. The freight is not a part of your cost?

A. Well, it is to some extent because—

Q. (Interrupting) Is it defrayed and deducted by the purchaser?

A. Yes, it is deducted by the purchaser, that is correct.

Q. You do not handle it at all, or it does not pass through your hands?

A. In some cases where you may have a prepaid freight station.

Q. Do you ordinarily make your delivered price at a given destination the same as the delivered prices of other mills at the same destination?

A. Well, we usually try to obtain the most money we can for our product. We usually meet the competitive price that we are aware of.

Q. Then your answer to my question is that you usually make them the same, isn't it?

A. No, I would not say in all cases they were the same. There may be a possibility of an error in price.

Examiner Norwood: He used the word "usually." That does not mean all cases.

The Witness: Not all cases. There may be an error creep in once in a while through mathematics.

Examiner Norwood: What is the usual result?

The Witness: Well, the usual result, I would say
7513 in the majority of cases, to be honest, would be that they would be about alike with variance at times.

By Mr. Wooden:

Q. Not only about alike, but exactly alike, isn't that so, Mr. Harte?

A. That may be made up also on the freight rates.

Q. Yes, but don't you try to ascertain what the base price in effect in a given territory is and then add the freight from that base to the delivery point?

A. Well, you can find what the price is, Mr. Wooden, by obtaining other companies' prices. You obtain that from the quotations that you actually obtain through a dealer organization.

Q. And you figure back, do you not, to ascertain whether

or not there is a base price on which that delivery price is based?

A. We can figure back by taking the railroad tariff and find out what the freight rate is from a competitor's mill A to a point B, and we can guess what he nets; but that is not the actual case as we see it. The man may be charging twenty cents for his package, and we may be charging only fifteen cents. I can assume that he is getting a certain price, yes.

Q. Don't you calculate back to find out what the base price is and then use that base price in all other cases
7514 by adding the freight to it?

A. We have in the majority of cases, yes.

Q. Do you use the freight rate books of the Institute in your calculations of delivered prices?

A. We do.

Q. Do your salesmen carry them?

A. Some of them; not all of them.

Q. How many salesmen have you?

A. We had about 41 until May 1st; now we have about 30.

Q. How do you determine which ones carry the books and which do not?

A. Those in the Metropolitan centers, such as New York, that would be only calling in this particular area of the five boroughs, they would not carry any books.

Q. Are they instructed as to the arbitrary prices or special prices that are in effect in that area?

A. Yes, they would be furnished with a list of arbitrary prices.

Q. In other words, the freight rate books would not be in use where there is an arbitrary price in effect?

A. No, sir.

Q. The other salesmen do carry them. How do they use them?

A. They probably use them based on what we
7515 guess the last base price was, what we call the mill net plus the freight to destination.

Q. Has your mill at Hagerstown ever been a basing point?

A. Not since I have been connected with the company. I don't believe it ever has been a basing point.

Q. Is your Catskill mill in the Hudson Valley area?

A. Yes, sir.

Q. What is the price at the Catskill mill?

A. $1.75 plus package, that is stripped, including a discount.

Q. Is that the same price that the other mills have in effect in that Hudson Valley area?

A. I believe it is.

Q. In what area in New England does that $1.75 price control?

A. Well, I cannot answer that fully. I will do my best with it. Part of it I think would be controlled, probably—I don't want to say "controlled"—probably the price would be made up in part of New England on account of the lower rate to some points from below, and it may turn out to be just vice versa. It may be based on the Hudson bases.

Q. But there is some part of New England in which the Hudson Valley base price controls?

A. Oh, yes.

Q. What is it?

7516 A. I would say Western Massachusetts and Western Vermont.

Q. And where does the Lehigh Valley base run up there?

A. I am not certain about that. I think it would run possibly to Southeastern Massachusetts and Connecticut, of course.

Q. What territory in New England is controlled by this new price which the Lawrence Portland Cement Company put in recently?

A. Well, as I recall it, it comes down as far south of Rockland to about Portland. I don't think it includes Portland.

Q. Portland, Maine?

A. Portland, Maine.

Q. In other words, it is a very limited area?

A. Well, I would not say it was limited, neither will I say it is a large area.

Q. In the remainder of Maine, is the Hudson Valley base still operative?

A. Mr. Wooden, I really have not checked that since the Lawrence changed their base point.

Q. Does the Lehigh Valley base control any territory in Maine?

A. No, I don't think it does; not fully.

Q. Is it your understanding that this new Lawrence

price at its Maine mill or Rockland mill is limited in
7517 its application to that area along the Coast that you mentioned?

A. Well, as far as we have been able to find in the field from competitive quotation up to date, it is sort of a limited area, yes, sir.

Q. Like an arbitrary price that you have in some of the other coastal points?

A. No, I don't believe you could classify it as an arbitrary price.

Q. It does not run inland to any great extent, does it?

A. Not that I have found up to date.

Q. Do you understand that was put in to meet foreign competition in that particular area?

A. That is my understanding, because I know that as a matter of fact that I called personally on the owners of the Dam project back some time ago. At that time they threatened to buy foreign cement, in fact I think they did buy foreign cement. I think our records indicate that there was some small amount, two or three carloads, put on the job.

Examiner Norwood: What record was that?

The Witness: I did not hear you.

Examiner Norwood: You speak of records indicating that there were two or three carloads of foreign cement used there.

The Witness: Our records through our sales de-
7518 partment.

Examiner Norwood: They reported to you?

The Witness: Yes.

7519 By Mr. Wooden:

Q. Was there a recent change in the freight rate in that locality?

A. Yes, sir.

Q. Was this change in the Lawrence price the equivalent of the freight rate?

A. As I recall it, it was.

Q. And how much change did that make?

A. You mean over an entire territory, to some point, or do you mean just to this particular dam job.

Q. No, I mean how much was the mill price at the Lawrence mill reduced? Was that reduced by the amount of freight rate reduction?

A. Yes.

Q. And how much was that per barrel?

A. The last I heard of it we are still checking, and that particular area it ran from 2 cents to 6 cents, and I think the highest was 9 cents, per barrel, at various destinations.

Q. Does your Howe's Cave mill sell into Buffalo?

A. No, sir.

Q. How far from Buffalo does it go?

A. We may get just a little south of Rochester, New York, and going the opposite way it would probably get down to a station or two south of Binghamton, New York.

7520 Q. Is the Rochester delivered price the equivalent of the Buffalo base price plus freight?

A. I don't think I am qualified to answer that at the moment. It may be made up on Hudson, or it may be made up on some point in the valley, or it could be made up on Buffalo.

Q. You don't know which?

A. I am not certain of which. No, sir.

Q. Your Hagerstown mill, what territory does that operate in, sell in?

A. We have no definite territory. That depends a whole lot on general business conditions. We may have a good market of consumption in Baltimore this year, and we may turn a great amount of our tonnage in Baltimore. If we have to go to North Carolina to find a market, we go to North Carolina.

Q. You do sell in North Carolina?

A. Yes, sir.

Q. Is your North Carolina delivered price the equivalent of the base price plus freight to given destination?

A. I think there would be more than one involved. It may be made up on a mill in Ohio, or it may be made up on a Valley mill, or a Virginia mill.

Q. Do you recognize Ironton, Ohio, as one of the points of which North Carolina prices are based?

7521 A. Yes.

Q. And Norfolk, Va.?

A. Yes.

Q. How about Fort Wick, Virginia?

A. I think in some cases Fort Wick governs in Virginia,

and in some parts North Carolina, probably the northeastern section of North Carolina.

Q. Referring to this new price of the Lawrence Company in Maine, how long had that been out before you discovered it?

A. Well, I think it was either the fourth or fifth day that we found it in the field. We do not have a man in the State of Maine. He makes an occasional trip up there, and he just happened to be there and obtained the information through dealers sources.

Q. Has your company taken the lead at any time in increasing prices?

A. Well, usually our sales policy and our company policy likewise has been to be followers and not leaders. But I believe we have in two cases been leaders.

Q. Can you say when and where they were?

A. I think one was in 1935, in Brooklyn, when we put in a stock of cement.

Q. Was that an increase or decrease in price?

A. That was a decrease in the price.

7522 Q. Put in to meet foreign competition?

A. That is correct.

Q. The other instance you referred to, what was that?

A. I think that was a price that we established in Baltimore, and some of the local communities in the direction of Washington, D. C., and as I recall it, at that time it ran as far as Hyattsville, Maryland.

Q. Was that a decrease?

A. That was a decrease.

Q. And a special price?

A. Yes.

Q. To meet foreign competition?

A. The price was to meet foreign competition principally. That was the main object. There may be several other objects. I think I can name two of them. We had a sales organization to keep together—that would be the second—and the third was that we would like to see our plant help employed if we can do it. Our main reason for the placing of that price in the Baltimore market, to my way of thinking, was very simple. The Baltimore market and the Washington markets are the two principal markets of our Security plant. You had a depressed price, or whatever you want to call it, an arbitrary price, in Brooklyn. Here are two of our principal markets in the

South, and it was my contention and our thought,
7523 that every mill in the Lehigh Valley would be running down to Baltimore and Washington to get tonnage, and I decided—our company decided—to put in a lower price to keep competition out of those two markets.

Q. How much discretion do you have as vice president in charge of sales, to vary prices which are ordinarily calculated as the equivalent of base price plus freight?

A. Well, I may make the suggestion, but I am responsible to the president of the company for final approval. In some cases it may be approved. In other cases the president of the company may disagree with me.

Q. Your salesmen have no discretion, I assume?

A. No, sir.

Q. You have some markets in which you are able to include an amount in your delivered price which is greater than the actual freight from your mill to the destination?

Examiner Norwood: Read that question.

(The question was read by the reporter.)

A. Yes, we have.

Q. Can you name several such markets?

A. Yes, I think I could name them, and likewise give you the difference in dollars and cents.

Q. All right; do that.

A. You take our Security Plant. That is not a big in-
dustrial center locally. There is no great consump-
7524 tion locally, in Hagerstown proper. I had these figures checked over some time ago, and as I recall them, based on an advantage, as you call it, of the price in a small area, in Hagerstown, in a year, we would possibly pick up $4,800 to $5,000 additional money.

Q. How much per barrel?

A. It would possibly run—I don't really know offhand what it would run in barrelage, because there are a lot of small towns around it and there are a lot of small towns there.

Q. Go ahead.

A. If we did apply a mill base in or at the Security Plant, in place of having a gain of $4,800. to $5,000. we would have a loss of $3,000.

Q. By reason of what?

A. By reason of selling our product at the most we can get for it and meet the competitive price at Hagerstown.

Q. Is the Hagerstown price based on Unionbridge?

A. Yes, sir.

Q. And what is the freight from Unionbridge to Hagerstown?

A. Well, I may be four cents off, but I think it is something like 37 or 38 cents.

Q. Per barrel?

A. Yes, sir.

7525 Q. On sales in Hagerstown, then, you are able to add that amount to your net realization?

A. We are, in some cases.

By Examiner Norwood:

Q. What is the freight from the Security plant at Hagerstown?

A. There are three different railroads. One railroad we would only have a switching charge, probably $6.30 a car, and $9.20. Another railroad we may have the 17 or 18 cent freight rate, and the third might possibly be 26 cents a barrel. You have several tracks interchanging there.

By Mr. Wooden:

Q. Are other companies shipping into Hagerstown?

A. Oh, yes; right alongside of our door.

Q. Some of them come from one side of Hagerstown and pass on to the other side for deliveries?

A. I don't know any concrete example, except when they come from a southerly point, coming north.

7526 Q. And they do in that case?

A. And they were south of the Hagerstown door, maybe by feet away, they were south of the door.

Q. Do they deliver beyond Hagerstown on the north from southern mills?

A. Well, I cannot answer that of my own knowledge.

Q. Do the mills north of Hagerstown ship past Hagerstown on the south?

A. Yes, I think that condition has existed.

Q. Can you say what companies have done that?

A. Well, I would not want to state what companies. Don't forget that I am still a competitor in the cement business.

Q. But you come in contact with the other companies and know what they are doing and where they are doing it?

A. Well, we do occasionally. We may even go so far as to go into a railroad station to see what brand of cement was in a particular railroad yard to discover what our competition may be.

Q. Don't you know from your experience whether or not mills to the north of you ship past Hagerstown?

A. Oh, yes, they do; plenty of them.

Q. South, and west?

A. South, west, and east.

Q. You have a minimum millnet which you observe?

A. No, we do not have any set minimum millnet.

7527 Some people have an idea that if the mill base on the Hudson River is $1.75, that every barrel you ship out of the door you get $1.75 for it, and I had occasion within the last three days to check a shipment that went down to the Brooklyn, New York, section, down near Coney Island.

Q. From Catskill?

A. From Catskill. And after we got all through and the bill was paid, we got $1.00½ for the product, but the layman may figure that you get $1.75 at your plant door for it, but that isn't so.

Q. But you do get $1.75 in some cases?

A. In very few cases.

Q. That is your maximum there at Catskill?

A. Yes, sir, and a very small percentage of total tonnage.

Q. Of course, that shipment that you referred to went into arbitrary price territory where the price was very low?

A. It went where we had to meet foreign competition, Mr. Wooden.

Q. Shipping north or east from the Catskill mill, you do get the $1.75, that is, if it does not go into the arbitrary price territory?

A. In not a very great percentage of the total tonnage shipped. We get $1.75 at Schenectady, New York, for instance.

7528 Q. Where you have to meet the competition only of domestic producers, your Catskill mill does get the $1.75?

A. No, it does not.

Q. Except where you ship into another territory that another base price controls?

A. Or where there is an arbitrary price market.

Q. I excluded the arbitrary price market.

A. We don't get $1.75 every place we ship cement.

Q. I understand that.

A. We get it in a very small percentage of our total shipments.

Q. Do you have an average mill net that you aim to maintain?

A. No, we have no set yardstick. We try to obtain the most money we can either in a given month or in the period of a year, and I would say if you want the information, that possibly our average from the $1.75 this year to date would probably be in the neighborhood of $1.34.

Q. And above that average there is the $1.75 maximum approximately?

A. You may have one or two points adjoining your plant doors where you may get $1.77 or $1.78, but that percentage in a year is a local dealer in a small town and you probably sell him two carloads in the whole year. One of the unfortunate ends of the construction industry,—

7529 if I could only get every road builder and every architect and everyone that is going to build a bread plant or any other kind of a plant to build that at the plant door, it would be great.

7530 By Mr. Wooden:

Q. Mr. Harte, do mills outside the Hudson Valley territory ship into the $1.75 territory of the Hudson Valley mills?

A. I did not get the last part of that question.

Examiner Norwood: Read it.

(The question was read.)

Mr. Leisure: I object to the question. I don't know what the $1.75 territory of the other mills is. As I understand this witness' testimony, he is talking about his own mill; and he has not attempted to describe $1.75 territory of other mills.

Examiner Norwood: There is no reason why he should not state these facts if he knows them.

Mr. Leisure: But if the question is stated incorrectly, it should be stated correctly, and I am objecting to the form of the question. This $1.75 territory of other mills has not been testified to here this morning.

The Witness: That was the part that I did not understand, Mr. Wooden.

By Mr. Wooden:

Q. Well, I will modify it. Do mills outside of the Hudson Valley territory ship into the $1.75 territory of your Catskill mill?

A. Yes, they do.

7531 Q. And I believe you said that your $1.75 Catskill price was the same as the mill price of other mills in the Hudson Valley?

A. To the best of my knowledge, yes.

Q. Did you get any of this business on that Dam in Maine that the Lawrence Company got some of?

A. No, sir, we solicited the job, but we did not get any part of it.

Q. Were bids taken?

A. No, I believe the owner takes care of his own construction. There is no general contractor or sub-contractor that I know of. It is a sort of an owner-built job.

Q. As far as you know, were the prices met that were made by Lawrence, were they met by other concerns as well as yours?

A. You mean the recent price change?

Q. Yes.

A. I don't know what the others have done, but I know we meet the prices that we met in the field, the competitive prices.

Q. Did your company prepare and submit questionnaires in answer to the request of Professor Clark and Burns, and the Market Research Committee of the Institute?

A. That is one particular item I knew nothing about until I read it in some of the transcripts. I had

7532 nothing to do with it, no one in the sales department propounded any of that questionnaire.

Q. Who did in your organization?

A. The president of our company, Mr. Porter.

Q. Did you ever see the questionnaire that was prepared?

A. No, sir, I have never had it in my own hands or in my own view.

Q. You had no part in making them up?

A. No, sir.

Q. Is yours the only mill at Security?

A. Yes, that is the only mill in that particular area.

Q. Is yours the only mill at Howes Cave, New York?

A. Yes, sir.

Q. How about Alsen?

A. We have a competitive company, a few miles away from us on the same side of the river.

Q. But you are the only one in Alsen?

A. That is correct; well, we are really not in Alsen. The shipping point is Alsen, but the town is Catskill.

Mr. Wooden: Your Honor, as to questionnaires which have been produced under the subpoena duces tecum and which have been numbered 969-4I, 4J, 4K, to 4S inclusive; 973-2P; 973-2Q; 973-2R; 973-2S; 969-4T to 5K, inclusive; 969-5L to 5V, inclusive; 969-5W to 6L, inclusive.

7533 They all contain the reports of information from North American mills located at the points where the witness says his company is the only mill that is located there. I wish to renew the offer at this time as to these particular questionnaires based on the additional information plus the fact that the questionnaires were produced in response to a subpoena which called for such material.

7535 Mr. Leisure: Frankly, I don't know whose questionnaires they are; so if counsel wants me to identify them in some way I cannot do it; I do not know.

Examiner Norwood: When you produced them, where did you get them?

Mr. Leisure: We produced, as I recall it, the Burns and Clark files and as I recall, these were in the Burns and Clark's possession, and we raised the objection of privileged communications.

Whose they are, I do not know. I have never tried to sort them out, and as a matter of fact, never read them.

7538 By Mr. Wooden:

Q. Mr. Harte, do you recall supplying Mr. Travis Brown, the representative of the Commission, with a list of the base prices used in figuring North American Portland cement?

A. Yes, I think we gave Mr. Brown some information. Just on what, I am not certain.

Q. I show you a paper marked for identification No. 309, and previously identified by Mr. Brown. Is that the information that you supplied him as being a list of base prices as used by the North American Company?

A. Well, I would not say that I gave him this personally, Mr. Wooden, but I think I arranged for the preparation of it. It does look like it.

Q. Do you recognize the prices as being the prices in effect at that time?

A. They seem to be all right, yes, and I believe Mr. Brown if he says that he got them from me.

Q. Would you say that was as of November, 1936?

A. That is Mr. Brown's dating on here (indicating).

Q. I mean the prices themselves.

A. I could not tell you that without I checked it. I would be glad to check it for you. That is not my
7539 writing on here (indicating).

Q. Was it in November, 1936 that you provided Mr. Brown with some such information?

A. I don't recall the particular time of the year, but I will take Mr. Brown's word for it, if he says I did.
7540 Q. Do you think it was about then?

A. It may have been about then. I cannot tie myself down to a definite year. That is back a couple of years.

Mr. Wooden: Your Honor, I will offer that paper in evidence, subject to check.

Mr. Leisure: May I ask the witness a question, please?

Examiner Norwood: Yes.

Mr. Leisure: Mr. Harte, did you talk to Mr. Brown personally in 1936?

The Witness: I did, when he first arrived in our office, Mr. Leisure.

Mr. Leisure: And did he ask you if you would make up any kind of a list for him?

The Witness: Yes, I think he requested such information.

Mr. Leisure: And do you recall whether you had one made up for him?

The Witness: I think I recall passing it on to one of my assistants, who was to prepare it for him.

Mr. Leisure: And what did he ask for, do you recall?

The Witness: I don't recall just the particular information he asked for. I do recall that he was evi-
7541 dently trying to obtain price information. As I recall it, we furnished him with some competitive information at the time, that we found in the various dealers' offices.

Mr. Leisure: And is it possible from those competitive quotations that you found that you made up such a list as you have described here?

The Witness: Yes. We would work it back and find out what those mill bases were, those respective mill bases of competition.

Mr. Leisure: I have no objection.

(COM. EX. 309 was offered and received in evidence.)

By Mr. Wooden:

Q. You have that information available, and you have that available in the course of your business, without having to work it back, have you not?

A. Oh, that is almost a daily procedure.

Q. You do not find the base prices changing very frequently, do you?

A. Yes, in some years, you would find quite a number of changes within any twelve months.

Q. Have you found any this last year?

7542 A. No, but I found a lot in 1931.

Q. But since then the base prices have been fairly constant, have they not?

A. Fairly constant, but there have been some changes brought about by increased freight rates.

Q. I am referring to mill base prices, and not delivered prices.

A. I call our delivered prices what we really get after it is paid for.

Q. But you do not get that, as you said a moment ago; you said you get only the mill net out of it?

A. That is what I mean.

Q. Can you tell by looking at Commission's Exhibit 309, whether there are any changes from those prices in effect?

A. I cannot tell you here, Mr. Wooden. I could, if I was in my own office, where I could check it.

Examiner Norwod: Off the record.

(Discussion off the record.)

7543 The witness identified Com. Ex. 317 D as papers, dated January 4, 1936, as follows: "It seems to be some price information, our price information passed on to our district manager where we find competitive quotations in the field". 317 F as a notice, dated January 15, 1936 as follows: "is the notice to our southern district

manager that our prices are changing in certain areas such as Virginia and the District of Columbia and he is to mail out quotations to our dealer trade". "This was evidently written (indicating) by one of our assistants, Mr. Bronson, in fact, two of them were. Yes, I would say those were normal letters in our business." Com.
7544 Ex. 317-G and H are "our" prices at various destinations in the District of Columbia, Maryland and Virginia. He thinks generally they are arbitrary prices. He would not say they are all arbitrary prices "without I checked them".

Mr. Wooden: I offer them in evidence.

The Witness: I cannot recall whether I ever had that particular letter in my own hand. It may have been actually handled through an assistant.

Mr. Leisure: May I ask the witness a question?

Examiner Norwood: Certainly.

Mr. Leisure: There is no signature on these documents. How do you identify them, Mr. Harte, as being sent out by one of your assistants?

The Witness: The thing that gave me that assumption was the dictator.

7545 Mr. Leisure: The typewritten signature in the corner?

The Witness: That is correct. I don't think we send letters out without being signed. Is there a signature underneath that stamp there?

Mr. Wooden: That is your file copy, isn't it?

Mr. Leisure: Apparently it is a photostat of a copy.

The Witness: Yes.

Mr. Leisure: We have no objection, your Honor.

Mr. Zimmerman: I have no objection.

(COM. EX. 317-D, F, G and H was offered and received in evidence.)

By Mr. Wooden:

Q. Is this Exhibit 317-D a sample of the way you follow price increases that others put into effect?

Mr. Leisure: I do not understand that question, your Honor.

Mr. Wooden: He said he was a price follower and not a leader.

The Witness: I do not quite follow your word "sample"—what you mean by "sample".

7546 Q. An example.

A. I would say an example probably, but not a sample, and I mean that in this way,—every letter we would send out on a price change would not be identical. It is not a daily run letter. It is dictated specially each time we find a price condition, and we may go on and state what company established the competition for us. We may have sent out another letter the day after this and it would not have the same language in it.

Q. When other companies increase prices, you are glad, I suppose, to follow along?

A. Yes, I wish somebody would have that idea this afternoon.

Q. Do you give five days' notice of your intention to increase your price?

A. Yes, we do, and I think that came out of the period during the Code time.

7547 Q. Showing you paper marked 314-I for identification, will you identify that as a photographic copy of an inter-office communication of your company?

A. Yes, I would say that we obtained this information from the Panama Canal Commission at Washington, D. C., and at the time of a public letting, when the bids were read.

Q. When you quote "For delivery in the Panama Canal Zone," that involves both a rail haul and an ocean haul, does it not?

A. That is correct.

Q. Did you find the ocean rates from various carriers vary from each other?

A. No. As I recall, the bids on the Panama Canal Commission, you are required on their invitation to bid to have the product carried on an American ship, and there was really only one line going to Panama, as far as the inquiry to bid is concerned, and that is the Panama Steamship Line. We do not have much choice as to what steamer to use, and that is the one used, and it is a Government owned boat.

Q. How do you figure your delivery costs to the Tidewater, in such a case?

A. We probably take a shipment going to the Canal and move it either from Catskill by water or barge,
7548 or we could bring it by rail, to Weehawken, and then have the railroad line carry it to the steamer.

I think the published movement to the Canal, as I recall, it, is 57 cents a barrel.

Q. How do you make up your bids on the delivered price for delivery in Panama?

A. We make that price up, if we had an invitation this afternoon to bid, I would go back on our files, and learn what the last price was that was put in there, then it would be up to the decision of our own company whether we wanted to lower that price or advance that price. And it may be a condition where we did not just care for that business, because in this case, I think, after we get the cement to the Canal, our net price at the mill is something like 95 cents, and you don't want too much of that business, or you would be bankrupt.

Q. Do you use your $1.75 price at Catskill plus freight to Tidewater and then ocean freight?

A. No, sir.

Q. How do you determine it?

A. We determine the price that we quote tomorrow morning on how we would feel tomorrow morning; and we would check and see what the last price was that was quoted to the Panama Canal Commission. If we would choose to quote the same price, we would quote the same price. If we did not care to quote, we would return
7549 the bid and say "No quotation." If we wanted to advance the price, we would advance it.

Q. Suppose there had been other bids since the last letting in which you participated, and you did not know what they were? Then what would you do?

A. I don't understand the question.

Q. Did you hear it?

A. I heard part of it. I didn't get the last part.

Q. I say, what would you do in the event that there were other lettings, or other bids between the one that you last knew of and the one that you were figuring on?

A. If I understood your question you mean if we received a new bid, a request to bid, tomorrow?

Q. Yes, and you didn't know what the last bid was?

A. I would know what the last bid was.

Q. I mean the one you did not put in?

A. I would know what the bid was. I would go to the Commission and get the records and find out when the bids came in. That is a public letting. It has been never refused.

7551 (COM. EX. 314-I was offered and received in evidence.)

7552 Q. As I understand it, Mr. Harte, you just assume in such cases that the prices that were bid on the previous letting would be bid on the next occasion, and you put your bid on that basis?

A. That is correct, and I may find that I am wrong when I put it that way. Somebody may decide to make the price lower or higher, either way. If they make it higher, I would be lucky, and if they made it lower, I would be unlucky.

Q. If you would be higher, you would be unlucky, and if you made it lower, would you be lucky?

A. If I was low, the Government would probably make the award to the low bidder.

7553 W. D. CLOOS, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

I am general manager and vice president of the Edison Cement Corporation. I have charge of all the operations of the company.

The company's mill is located at New Village, New Jersey, and is the only mill at that point. The sales territory varies at various times. Generally speaking, it is

7554 New England and the middle Atlantic States, that is, the eastern part of Pennsylvania, a little of Delaware, New Jersey and part of New York.

Edison has manufactured as high as 2,200,000 barrels of cement and I think that is about its capacity. The witness' company produced that much, the figure that he mentioned, over a period of a year. I don't know just what you mean by the Lehigh Valley district. We are 8 miles east of Phillipsbourg and between Washington and Phillipsbourg, New Jersey. The Lehigh Valley is on the other side of the river, over in Pennsylvania.

7556 Q. Do you sell on a delivered price basis only?

A. At the present time that is the only way we are selling.

Q. How do you calculate your delivered prices?

A. In substance, we meet competition of the other prices, the prices in the market.

Q. Do you ascertain by a process of calculation what the price is at other mills and then use that as a basis for figuring your other delivered price quotations?

7557 The Witness: We do not use or calculate the prices at other mills and use that as a basis for our calculations of our delivered prices.

Examiner Norwood: How do you meet their competition?

The Witness: We find out what it is in the field and meet it if we want the business.

By Mr. Wooden:

Q. But you have points where you do not know just what the price is by other mills sometimes, don't you? Points where you quote and others do not?

A. I don't think so. I think we are able to determine the delivered price of practically every town that we sell.

Examiner Norwood: How do you do that?

The Witness: By finding out from the trade that we serve at those points.

Examiner Norwood: You have to find out then what your competitor's price is at every particular point?

The Witness: We do in the course of our business.

By Mr. Wooden:

Q. Don't you have some points where your dealer is the only dealer in the town?

A. None that I know of.

Q. Did your company adopt the policy several years ago of refusing to sell dealers who handled foreign cement?

7558 A. No, we did not adopt any policy on it.

Q. What did you do?

A. I personally was against selling our competitors which we considered the dealers who sold foreign cement.

Q. You did then refuse to sell such dealers?

A. In some instances, yes.

Q. Did you notify your salesmen to report the names of dealers who were handling foreign cement?

A. No. I did not.

Q. Do you know whether your Mr. Bruck in Boston reported such information to you?

A. He did at times report information about dealers that were handling foreign cement, yes.

Q. Wasn't that in response to your instructions or directions?

A. Well, my general instructions are that the salesmen and sales managers in the territory should know everything that is going on.

7562 A. There was a time when we delivered cement to trucks at our mill; just when I cannot say offhand.

7563 Q. Was it up to about 1931 or 1932?

A. I think somewhere along that time; I don't know just when.

Q. Now, just complete your statement. You say there was a time; tell us the further history of the matter.

A. I don't know as I can say any more than that we did deliver cement to trucks for some period of time and finally discontinued.

Q. Discontinued it wholly?

A. Yes.

Q. How long since you discontinued it wholly?

A. Well, I cannot recall offhand. It was somewhere, I believe, back in the late 1929's or early 1930's.

Q. Did you deliver to trucks at your mill operated by the Portland lines of Newark, New Jersey?

A. I believe we did, yes.

Q. Was there a time when you charged fifteen cents a barrel for delivering to trucks?

A. I think fifteen cents was the figure that we did at one time charge.

Q. Then as I understand it, when you discontinued the fifteen-cent charge, you discontinued the delivery to trucks entirely, is that right?

A. Yes.

Q. I am showing you, Mr. Cloos, papers marked

7564 for identification 973-YY and ZZ and will ask you if you will identify them as the information furnished by your company and your mill at New Village to Professors Clark and Burns in response to a questionnaire?

A. (Examining papers) I don't recognize it. I never saw it before.

Q. Who in your organization made up the replies to such a questionnaire?

A. I am sure I don't know.

Q. Do you mean to say that as general manager you don't know who in your organization had anything to do with that matter?

A. Making up this report, whatever it is, I don't know anything about it.

Q. Didn't you know there was a questionnaire made up in your organization?

A. I seem to recall that there was a questionnaire, several questionnaires, but I don't remember whether this one which you speak about, which I do not even know the name of, was one of them.

Q. You don't know who in your organization made up any such questionnaire?

Examiner Norwood: Do you recognize any of the handwriting on there?

The Witness: I do not. I was trying to see if I
7565 could recognize it, but I do not recognize even the figures. I am sure they were not made up in our office in New York; quite sure.

By Mr. Wooden:

Q. Do you know whether a questionnaire was made up at your mill at New Village?

A. It was not made up to my knowledge in New Village.

Q. You don't know who in your organization would have had anything to do with that matter?

A. No, I am sure I do not.

7567 Examiner Norwood: Go ahead.

Mr. Wooden: In that connection, your Honor, my attention is called to pages 3871 and 3872 of the record where Mr. Leisure, in proffering some document, says:

"The next is papers from the Cement Institute, covering the Burns and Clark material."

On page 3872 of the record, Mr. Leisure said:

"Also under the subpoenas and under the order of the Federal Trade Commission:

"I may say as to these questionnaires, your Honor, or the answers to the questionnaires, rather, instead turning over copies, or waiting for them to come in from the companies, we are turning in the originals, and I do not want to ask the Government to go to the expense of photostating these and giving them back, but since we are using them, and they are part of our case, if you look over those first and return to us the ones you do not want, it will be of assistance to us, because these are the originals which have been sent in, and are the complete record, I believe, on the subject. They are our own files."

7574 (COM. EX. 1170 was offered and received in evidence.)

7579 (COM. EX. 1171 was offered and received in evidence.)

7580 (COM. EX. 1172 was offered and received in evidence.)

LYNN C. PAULSON, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

In the course of my employment with the Federal Trade Commission I had occasion at one time, on December 12, 1936, to interview and examine the files of Mr. Mallory, the Institute statistician.

The witness identified Com. Ex. 1173 A-K as a
7581 mimeographed tabulation of key numbers which Mr. Mallory handed to him and which he described as being a key or an explanation of key numbers of the Cement Institute, which it used in getting out statistics.

Mr. Mallory made use of such key numbers in his work as statistician of the Cement Institute.

By Mr. Zimmerman:

The date Mr. Mallory had his conversation with the witness was December 12, 1936. Mr. Mallory explained that he made use of the key numbers to designate plants and had a key number for each plant in the industry and that they gather and disseminate statistics regarding cement by plants rather than using full names, "They use this key, and this is the guide to the key that they use."

Mr. Wooden: I offer the exhibits in evidence.

Mr. Leisure: No objection.

(COM. EX. 1173-A to K was offered and received in evidence.)

7582 HUGH WHITE, previously sworn, called on behalf of the Commission, testified further as follows:

Direct Examination by Mr. Wooden.

The witness identified Com. Ex. 1173 L to Q, inclusive, as a list of the exhibits covered by Commission's Numbers 972 1B to 4K, inclusive, and 973 1A to 4N, inclusive, showing the mill numbers and the locations of the mills, appearing therein, appearing on the questionnaires, Clark and Burns' questionnaires, so called.

Opposite each of the exhibits numbered 972-1-B to 4-K, inclusive, and 973-1-A to 4-N, inclusive, the witness has shown mill numbers appearing on the exhibits and opposite those mill numbers, the name of the assumed producer. The name of each such producer "is arrived at by a process of elimination in some cases. It might be illustrated by referring to Commission's Exhibit 975-16-A, which contains questionnaire No. 17, requiring the producer to state the location of any mills under the same control as the mill to which this questionnaire applies. In the exhibit re-
7583 ferred to will be found mills listed at the following locations: Onrod, Sandts Eddy, Pennsylvania, Union Bridge and Forwick, Virginia. By referring to the Minerals Year Book issued by the Department of the Interior, 1933, Bureau of Mines, copy of which was put in the record early in this case by the witness Bagley, we found that there is only one mill located at those points, operated by the Lehigh Portland Cement Company. All of these questionnaires require answers to that question.

Publication shows that Lehigh operates the only mill at Fordwick, Ormrod, Sandts Eddy, Pennsylvania, Union Bridge, Maryland and Metaline Falls, Washington. By process of elimination all other mills, "if you may put it that way, we found that these mills are numbered as I have indicated." The names of the producer located at these various points are obtained from the Minerals Year Book and are entered in the compilation he has made. He has checked or compared the compilation that he has made showing the key numbers of those questionnaires with the key numbers that were obtained by Mr. Paulson from Mr. Mal-
7584 lory for use in the statistical work, introduced as Ex-

7585 hibits 1173 A-K and finds them identical with one exception. That was due to an error on his part. The Lehigh Portland Cement Company's No. 3 Ormrod mill is shown as No. 261 on the exhibit which he has just offered, whereas the Exhibit 1173 A-K shows 261 as the Green Bag Cement Company of Pennsylvania, and Neville Island, Ohio, which he assumes to be Neville Island, Pennsylvania. Mill 261 is the only difference between the "Malbry" (Mallory) key list and the one he compiled on the questionnaires. He thinks he should say, however, that there are some questionnaires bearing numbers which are not on the so-called Mallory list.

Mr. Wooden: Your Honor, I will offer those last numbered exhibits which Mr. White has identified as Commission's Exhibit 1173-L to Q.

Mr. Leisure: May I ask Mr. White a question about the exhibit?

Examiner Norwood: Certainly.

Preliminary Examination by Mr. Leisure.

Q. On this Exhibit 1173-L, Mr. White, what does that heading "Yes" indicate after "No." "No." is 7586 "number," isn't it?

A. Yes. It is intended to indicate whether the response was made to the certain question shown in the questionnaire as 24-C.

Q. And what is the question of 24-C on the questionnaire? Showing variations from maximum mill prices?

A. That is my recollection of what it was.

Q. You have a heading there of that?

A. That is right.

Q. Why is that put on this tabulation if the purpose here was to establish key numbers?

A. It was for two purposes,—to indicate to us without making another tabulation whether replies were made to that question in the questionnaire.

Q. What was the purpose of this tabulation? What were you trying to show by it?

A. First to ascertain for what mills the replies to questionnaires had been made, and second, as I have said, to ascertain whether an answer was made to question 24C.

Q. Was there any reason for picking out just one question out of the questionnaires and including it in this tabulation? Did you have any reason for doing that?

A. Not especially except to show at a glance whether a response was made to that question.

Q. And when you have an "X" under it, what does that mean?

7587 A. To indicate there was a response.

Q. That they did answer?

A. Yes.

Q. And where it is blank and nothing is there, does that indicate they did not?

A. I think you will find that there is a similar mark under the answer "No" in—

Q. (Interrupting.) In the opposite column?

A. In the opposite column.

Q. That means that they did not answer 24C, is that right?

A. There are two cases in which there were no answers made apparently, as indicated on page 3 of that exhibit. It appears there have been answers in all other cases.

Q. On page 1 there are four starting immediately where there was no answer, was there?

Examiner Norwood: Off the record.

(Discussion off the record.)

7588 Mr. Leisure: Your Honor, we must object to these exhibits, Commission's Exhibits 1173-L to Q. It is a tabulation by Mr. White in which he attempts to summarize certain exhibits which have not yet been offered in evidence. The Burns and Clark material is not in evidence as yet, all of it, and it also states conclusions of Mr. White's which have not been confirmed in any way.

I think the offer of this document is premature at this time.

Mr. Wooden: Your Honor, it is intended as part of the identification of the pending questionnaires, and to be considered in that connection.

Mr. Hershberger: You cannot identify questionnaires which are not in evidence, by having someone make up a summary of the numbers.

Examiner Norwood: I will consider those and make the ruling on them tomorrow morning, at the same time that I do the others.

Mr. Zimmerman: If I understand this correctly, Mr. White has been examined touching a comparison that he made of certain key numbers upon an exhibit that had to do with statistical information; and he says he has com-

pared those with certain key numbers. Now, those
7589 other key numbers were what, Mr. White, that you compared them with?

The Witness: They—

Mr. Wooden: (Interrupting.) They are in evidence as 1173-A to K.

Mr. Zimmerman: Let me see that.

(Mr. Wooden hands papers to Mr. Zimmerman.)

Mr. Zimmerman: The document that you refer to as 1173-A to K is a list of key numbers which Mr. White says —or somebody has said—were furnished by Mr. Mallory as the numbers that Mr. Mallory used in connection with the collection and dissemination of statistical information.

Mr. Wooden: Yes.

Mr. Zimmerman: Now my question is: what did he compare these key numbers on this exhibit 1173-A to K with?

Mr. Wooden: With the key numbers of the questionnaires.

Mr. Zimmerman: Which are not in evidence?

Mr. Wooden: Not yet.

Mr. Zimmerman: Then it would seem to me that there has been no proper foundation laid for any exhibit showing that comparison or any testimony showing that comparison. That testimony is not proper, because it is going into, by comparison, matters which have not yet been
7590 been offered in evidence.

Examiner Norwood: I think it is admissible as an identification of these pending offers.

Mr. Zimmerman: I do not think so. If these things had been assembled and laid on the table, and you say, "Here they are; this is what we want to offer in evidence; look at them and see what numbers appear thereon; and you have the opportunity to check them,"—that is something that has not been done as yet, certainly.

Mr. Wooden: The fact that the key numbers on the questionnaires correspond to the key numbers in the Mallory Statistical Service, is a fact to be taken into consideration, your Honor, in the identification of the questionnaire.

Mr. Zimmerman: How do you expect to test that fact for the record?

Examiner Norwood: I think we can simply leave that open until tomorrow morning, when I will rule on the others.

Mr. Zimmerman: How can you make any check? You cannot. No one can, as yet.

Mr. MacIntyre: The questionnaires are available for check either by counsel for the respondents or his Honor.

7591 Mr. Zimmerman: We are not required to make a check of something that has not been offered in evidence.

Mr. Wooden: It has been offered.

Mr. Zimmerman: All of them?

Mr. Wooden: Yes.

Mr. Zimmerman: Have you offered those that you expect to offer?

Mr. Wooden: All that are involved in this comparison.

Mr. Zimmerman: If that is correct, then there is an opportunity to check.

Now we come down to this exhibit, 1173-L to Q. Do I understand that you offer this as a list, first of all, a list of the numbers that you say appear on the questionnaires you have offered in evidence?

Mr. Wooden: Right.

Mr. Zimmerman: Is that the only purpose for which you offer it?

Mr. Wooden: It is the only purpose at this time.

Mr. Zimmerman: Then why don't you do this—

Examiner Norwood: (Interrupting.) I understand his purpose is to identify each and every questionnaire.

7592 Mr. Zimmerman: All right, sir. Then my suggestion is that if they want to make that kind of a tabulation, that should be made without adding other matters; in other words, the tabulation should be just exactly in what the purpose purports to be, a list of numbers for comparison, and it is only a matter of retyping in order to have an exhibit which would do that and not bring in other extraneous matters, and you will see that this does bring in other matters than the numbers.

Examiner Norwood: This witness may explain these figures.

Mr. Wooden: He has done so.

Mr. Zimmerman: It is not the figures that I have reference to. If they prepare a tabulation merely of the figures which they say by comparison show certain things, that would be the proper method for them to use.

Mr. Wooden: The witness' statement is that he got some of that information from the Bureau of Mines publication as to the identity of mills at certain places.

Mr. Zimmerman: We are confined now only to one point

and that is the comparison between the numbers as listed on this exhibit 1173-A to K, and the numbers which appear
7593 in the fourth column from the left on this exhibit 1173-L to Q. What I have proposed is that they confine their offer to the tabulation, because that is all they need for the purposes of comparison.

Mr. Wooden: Without the identity of the plant and mills opposite each location, there is no point to it.

Examiner Norwood: This is just tabulated for convenience.

Mr. Zimmerman: This purports to be something entirely different. It is headed "Index to Clark and Burns data containing replies to questionnaires (24C) showing variations from maximum mill prices."

Examiner Norwood: This is tabulated there for our convenience. The witness is testifying to that. I shall do as I said at the outset, retain that and rule on it in the morning when I rule on this other questionnaire.

By Mr. Wooden:

Papers marked for identification, Com. Ex. 1174 A to O, inclusive, are three different kinds. The witness identified 1174-A to L inclusive as an original report of an interview
7594 had with Mr. G. S. Brown, president of Alpha Portland Cement Company at Easton, Pennsylvania on October 24, 1929. It is a joint report by Dr. W. H. Stevens, at that time Assistant Chief Economist of the Commission, and by him; 1174 M as a carbon copy of a letter signed by the chief economist which is addressed to Mr. G. S. Brown, president of the Alpha Portland Cement Company under date of November 22nd; 1174 N and O is Mr. Brown's reply dated November 29, 1929. That is all he has.

The interview report that he has identified as jointly his and Dr. Stevens' with Mr. Brown was submitted to Mr. Brown for his perusal and corrections or approval. The correspondence that he has there covered that. The file contains a draft of the original report by Dr. Stevens and him which was submitted to Mr. Brown for his approval, and in Mr. G. S. Brown's reply, Com. Ex. 1174 M, he asks that a certain paragraph be stricken from the report, to
which they agreed. They eliminated the paragraph
7595 near the bottom of page 10 of the original draft, and the report marked Exhibit 1174 A to L, inclusive, is the corrected report as Mr. Brown asked that it be made.

7596 New York City, N. Y.
Friday, June 3rd, 1938.

7597 Mr. Leisure: With your Honor's permission, before the hearing starts this morning I would like to make a correction on the record as of yesterday.

Since these hearings started it has been our practice where matters of identification were concerned, to not make any technical objections, and to cooperate with the Government. I think the record will bear me out in this, that we have attempted in all cases to make objections only of substance and not to make technical objections. There have been times where letters were offered by third parties, where we felt we were being deprived of the right of cross examination, that we have objected to the documents going in until they were identified by the author; but in those cases we felt the objection was one of substance and not merely of identification.

Now, in looking over the record last night, it occurred to me that your Honor might not have understood the purpose of the numbers that were used on the question-
7598 naires that were sent in to Professor Burns and Clark on the questionnaires by the various companies, and I want to make very clear to your Honor this morning that the purpose of those numbers was not for the purpose of any secrecy later, as far as any Governmental investigation was concerned; the purpose was simply and solely this: that the companies felt that there were trade secrets being divulged in these questionnaires, and because of that fact they did not want them to be made public and they did not want their competitors to get hold of them. For that reason, and for no other reason, numbers were used.

Examiner Norwood: I think that appears in some of the correspondence.

Mr. Leisure: I wanted to be sure that your Honor understood it, and from looking at the record yesterday I was not sure whether you did or not.

Now, with respect to the identification of those documents, we are confronted with this difficulty, which I think can be corrected by cooperation with the counsel for the Commission: that they were turned over from the various companies to Professors Burns and Clark, and they were

working on the questionnaires. They did not keep them in separate files, under separate headings of certain
7599 companies. As they worked on them they classified them according to their work.

So that when this case was started by complaint, and we asked them to turn over the papers, in order that we might prepare our trial briefs, they did not separately segregate them under company headings, but turned them over to us as they were working on them, in groups.

Therefore, while it is impossible for us to say at this time, "This paper came from a certain company," they did not; they came from Professors Burns and Clark to us. We can identify certain numbers that the companies used, and I think by cooperating with Mr. Wooden we can do that to the extent that it will not be necessary to call witnesses from each company. I see no good purpose to be served by putting the Commission to the expense of calling a witness or several witnesses from one company —and seventy-five companies—all the way in to New York just to identify a paper.

7600 We have not ever taken that position in the past, and we do not propose to do it now. I just wanted to make that clear to your Honor.

We feel that these questionnaires were trade secrets and that they were privileged communications, and we have our objections to that extent, but as to the numbers I wanted to make very clear why they were used.

Mr. Wooden: I don't know as to Mr. Leisure, but some counsel for some respondents have certainly taken the position at times that these papers were not sufficiently identified. However that may be, we are perfectly willing and of course glad to shorten the process and shorten the necessary proceedings to that extent. I take it that Mr. Leisure's suggestion involves the production of a key list to the numbers of the questionnaires which will show which mill is represented by each number?

Mr. Leisure: I thought perhaps we could work something out as they go in without any difficulty, with each questionnaire, along the line of Mr. White's tabulation. Subject to check if we find that is the wrong number, and I am sure the Commission will correct the number.

Mr. Wooden: Yes, I wanted to have Mr. White
7601 supplement his testimony slightly in regard to the one error which he found regarding it and which,

when corrected, makes the whole thing consistent with the Mallory key numbers.

7602 Mr. Zimmerman: If the Examiner please, in order that there may be no difficulties in the path of getting this Burns-Clark stuff smoothed out, if the record shows any objection on our part which raises any difficulty, we will withdraw those objections and will be very glad to adopt Mr. Leisure's suggestion.

Now, off the record—

(Discussion off the record.)

HUGH E. WHITE, previously duly sworn, resumed the stand and testified further as follows:

Direct Examination by Mr. Wooden (Continued).

Q. Mr. White, yesterday you spoke of one exception in your checking of the list of key numbers on the questionnaires with the key numbers on the Mallory statistical list. Have you made further inquiry to ascertain the facts regarding that one possible exception?

7603 A. I have.

Q. What have you found?

A. On page 7585 of the record, line 4, I am recorded as having said "That was due to an error on my part." I intended to say that that may have been due to an error on my part.

In looking into the matter further, I find that the number appearing on Exhibit 973-4B, unlike the other questionnaire, was inserted with pen and ink and the number seemed a little bit uncertain. Instead of being 261 as I had assumed, I find the correct number to be 201-B. That is shown conclusively by referring to Commission's Exhibit E969 series 15-Y to 16-F, in which the same mill that is shown that is number 201-B is shown as the Omrod mill of the Lehigh.

Q. Is it now your testimony that there are no exceptions to the checked correspondence as to the key numbers on the Mallory statistical list and the key numbers on the Clark and Burns questionnaire?

A. That is correct.

7604 (COM. EX. 973-2-Y to 973-2-Z was offered and received in evidence.)

Mr. Wooden: Your Honor, I have to press for a ruling at this time on the entire collection of questionnaires. It seems to me the matter of identification has been completely taken care of.

Examiner Norwood: The questionnaires will be received.

Mr. Leisure: Just one moment, if you please.

Your Honor, I understand that when your Honor says they will be received, that means that writings that have not been identified according to our understanding all through the case will not be received in evidence until identified. What I have in mind is this: Professors Burns and Clark and their assistants, for all I know, have made copious notes on certain of these documents. It would not be proper to have them admitted as coming from the companies. The respondents, many of them, have never seen any of these writings, and do not know what they are. So that when the questionnaires are received, as I understand it, they are received carrying the typewritten material,

but any handwriting is to be identified as all hand-
7605 writing in the case has been identified.

Mr. Wooden: In so far as they are the notes and handwriting of Professors Clark and Burns, or their assistants, they would come in, but I grant Mr. Leisure's point that so far the identity of the handwriting or of all of the handwriting has not been shown, and I suppose the usual rule that we have been applying will apply here.

Examiner Norwood: Handwriting will not be considered unless from the face of the exhibit itself it appears clearly that it is genuine and indicates its source, or unless it is shown by other evidence that it is to be properly considered with the document.

Mr. Leisure: By "its source" your Honor means from the respondents, that we find one of the respondents made it?

Examiner Norwood: Yes, or any writing, unless it appears clearly from the document that it is part of it.

Some of these questionnaires are filled out in handwriting, you see, and where it is the identical handwriting on the margin it would appear that it is part of the document.

Mr. Leisure: But as to third parties, whether they be agents or—

7606 Examiner Norwood: (Interrupting.) Yes, as to third parties, it must be shown.

Mr. Leisure: Handwriting must be identified unless it is from the respondents.

Examiner Norwood: Yes, or—

Mr. Wooden: (Interrupting). Or agents.

Mr. Leisure: "Agents" may include anyone.

Examiner Norwood: I think you have covered that.

Mr. Leisure: May I have it clear, your Honor? Mr. Wooden kept saying "agents."

Examiner Norwood: I think you will have to show who the agents were.

Mr. Wooden: As to the identity of these particular exhibits, they are rather voluminous, and each page should carry a separate number for identification. It seems to me the record ought to show something more than merely the questionnaires, as such, as a group were admitted.

7607 Examiner Norwood: I want to show the numbers.

Mr. Wooden: Yes.

Mr. Leisure: As I understand it, your Honor, they were again offered in evidence this morning, and we of course have all of the objections we have heretofore made as to their admission.

Examiner Norwood: Yes, as to relevancy and so forth.

The following exhibits for identification are received in evidence on behalf of the Commission, as marked:

970-1A to 16N, inclusive.
967-1A to 18-O, inclusive.
968-1A to 18-I, inclusive.
969-1A to 18-A, inclusive.
972-1/A to 4-K, inclusive.

Mr. Leisure: This first offer, your Honor, there is some correspondence included, and I don't know whether it is intended to be included in the offer or not.

Mr. Wooden: I don't know what that is.

Mr. Leisure: It is clipped on the back of some of these questionnaires.

Mr. Wooden: Yes, your Honor, the letters right there in particular are from the company to Professor

7608 Burns, about the questionnaires, either inclusive with or making some comment about them, I don't know which.

Examiner Norwood: Included with the questionnaire?

Mr. Wooden: Yes, sir.

Examiner Norwood: I shall receive them.

Mr. Wooden: Frequently there is correspondence with the questionnaire that supplements or amplifies the questionnaires, on the requests of Professors Clark and Burns.

(COM. EXS. 970-1-A to 16-N, inclusive, 967-1-A to 18-O, inclusive, 968-1-A to 18-I, inclusive, 969-1-A to 18-A, inclusive, 972-1-A to 4-K, inclusive, 974-1-A to 15-R, inclusive, 973-1-A to 4-N, inclusive, 975-1-A to 20-L, inclusive, and 976-1-A to 15-N, inclusive, were offered and received in evidence.)

7609 (Discussion off the record.)

Mr. Wooden: Is there a ruling, your Honor, as to the exhibits that were offered yesterday afternoon, about the key lists that Mr. White testified to?

Examiner Norwood: 1173-L to Q, proffered yesterday, is received in evidence.

Mr. Wooden: Subject to check with any key list which respondents may produce.

Examiner Norwood: Yes.

(COM. EX. 1173-L to Q was offered and received in evidence.)

7610 Examiner Norwood: Exhibit 1174-A to O proffered yesterday is now to be disposed of.

Mr. Leisure: Before we leave this subject, there are a number of questionnaires included in this group which are non-respondents. We object to those. We can only speak for the respondents and make all of the objections we have heretofore made as to questionnaires furnished by non-respondents.

Mr. Wooden: There may be three or four in that category, but we submit that at the time of the activity covered by the questionnaires, they were members of the Institute, and even if that were not true, we still submit that this whole program involved in these questionnaires was an Institute activity in which the Institute enlisted the aid not only of its members but possibly of one or two others, and being an Institute activity, the questionnaire of even a non-member becomes an activity of the Institute with regard to this whole questionnaire activity. But, as I say, the several—three or four possibly, not over that—who may not now be members of the Institute, were members at the time of the preparation and work on these questionnaires.

Mr. Leisure: As to those, your Honor, we urge our objection. Just a hurried check here shows that
7611 972-E, J, H, K, L are such exhibits as come from nonrespondents; also 972-3K and 30; and there may be others. That is just a hurried check. We object to them as being incompetent, immaterial and irrelevant, they contain hearsay statements, and no proper basis has been laid for their offer in evidence.

Examiner Norwood: They will be retained. Off the record.

(Discussion off the record.)

Examiner Norwood: By agreement of counsel, Commission's Exhibit 1173-L to Q is incorporated into the record (and will be found following the adjournment of this day's session).

Mr. Wooden: I should have said, your Honor, that there is one questionnaire, that of the Security mill of the North American Company, that was here yesterday, but we were unable to locate it this morning, and I believe it is not among those that were offered.

Mr. Leake: When it is found, I will consent that it be put in.

7617 (COM. EX. 1174-A to 1174-O was offered and received in evidence.)

7618 The witness identified Com. Ex. 1175-A as an original letter from G. S. Brown, President, Alpha Portland Cement Company, dated October 25, 1929, addressed to W. H. S. Stevens, Assistant Chief Economist of the Federal Trade Commission, which he removed yesterday from the Price Bases File R.E.P.5, S.T.E.7, A.L.P. 5; 1175-B as a pamphlet entitled "Progress in the Cement Industry" by G. S. Brown, which is referred to in Mr. Brown's letter, and the letter says that it was transmitted by the letter.

Mr. Wooden: Your Honor, I am offering 1175-A and such portions of the pamphlet that is transmitted thereby as appear in 1175-B and C. B is the facing sheet, and I am offering only the portions of the facing sheet that are encircled by a red pencil, the portions on the second page that are encircled by a red pencil and the following paragraph, encircled by a red pencil, which is marked 1175-C, reading as follows:

"A cement manufacturer has only one thing that it may offer to its customers—"

Mr. Leisure: (Interrupting.) Don't read it before
7619 it is in evidence, please, Mr. Wooden.
Mr. Wooden: Well, I am offering it.

7620 JOHN P. CALLAGHAN, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

I am in the business of manufacturing ready mixed concrete and the handling and retailing of building materials at Harrison, N. J. within the Metropolitan New York district. In connection with the conduct of my business
7621 we purchase Portland Cement.

Q. From what sources?

A. From the various companies.

Q. Will you name some of them?

A. We use Atlas Portland Cement, Lehigh, Edison, Vulcanite, National of which the brand name is Pioneer, Penn Dixie, Lone Star,—in other words, we use about eleven or twelve different brands.

Q. They constitute the majority of all of the brands being sold in this Metropolitan district?

A. Mostly. Subject to the call of the trade that we serve.

Q. What method of delivery is utilized in transporting that cement to either your job sites or your warehouse from the cement manufacturers' places of business?

A. We place an order with the cement company and they rail it into a railroad yard located about a mile away from our plant, and take the cement from the car in motor trucks and deliver it to our yard, in other words, we have no railroad siding.

Q. At your warehouse?

A. Yes.

Q. It must be taken from the rail car to your warehouse after it arrives in Harrison, New Jersey?

7622 A. That is correct, yes, sir.

Q. And the same thing would be true with respect to—

A. (Interrupting.) Any job we would furnish.

Q. Has there at any time in the past been any different mode of delivery utilized by you?

A. Some years ago, we incorporated a company for

the sole purpose of transporting Portland cement from mills directly to our plant, at a saving of about fifty per cent difference than the present way we handle.

Q. In other words, the cost of transporting it to your job sites and warehouse was 50 per cent less than the cost by rail?

A. About 50 per cent I mean in the transportation costs.

Q. That is, the transportation costs would be 50 per cent less?

A. Yes..

Q. And about what date was that, Mr. Callaghan?

A. If I recall it, it was about 1931. It went on for a period of about a year and a half, I believe.

Q. It ran for about a year and a half?

A. Yes, sir.

Q. What led you to seek that method of delivery? The savings?

A. The economies that it showed us. Not only in the price or the money involved, but the service in time.
7623 I might state that in our system of railroad delivery, we generally allow three days, and with our trucking system, we received it in three hours.

Q. You have been speaking of trucking Portland cement when you have been speaking of the more efficient or less costly methods as compared with rail?

A. Yes, sir.

Q. I understand you to say that the time of delivery was better?

A. Much better.

Q. Shorter?

A. Yes.

Q. Within a few hours by truck, and how long did you say by rail?

A. Three hours by the motor truck time, and three days by the railroad.

Q. Did you ever experience any delays by the trucking, that is, more than in an isolated instance?

A. It might be an hour or so, but we put up with that. We allowed that, because there was no reason for us to kick.

Q. Did you experience at any time during the trucking of cement, damage to cement in transit?

A. No, for the reason that when we received the cement at the cement mills, we practically signed a ticket

and our responsibilities began from that plant, and if
7624 there were any damages, we would have to take care of them ourselves.

Q. You assumed the responsibility and the liability for damage?

A. Yes, sir.

Q. And having taken title to the cement, you consider it your property at the cement mill?

A. That is right.

Q. And if any damage did occur, did you in the light of those facts make any complaint to the cement manufacturers?

A. No, for the reason that it was our handling and we had to take care of it.

Q. From what mills did you do trucking of cement at that time, Mr. Gallaghan?

A. The distance appealed to us. The two mills were the Edison and Vulcanite. One was located in Alpha, New Jersey, I believe that was the Vulcanite or the Vulcan, New Jersey, and the other was New Village, New Jersey.

Q. What was the distance between the location of those mills and the location of your business in Harrison, New Jersey?

A. I would say about 75 miles,—60 to 75 miles.

Q. And did I understand you to say that it was even for the trucking of the cement up to that distance more economical by fifty per cent than by rail delivery?

A. More than fifty per cent in some cases.

7625 Q. Did the cement manufacturers at any time during the period that you engaged in trucking cement to your place of business impose any charges for loading trucks other than the loading of railroad cars at their place of business?

Mr. Leisure: I assume that means the manufacturers that he trucked from?

Mr. MacIntyre: Exactly.

The Witness: In response to that question, the first two or three months there was no difference, but after that, the Edison Cement Company, Mr. Wetzler, called me and I went in to his office and he said that I would have to pay 15 cents a barrel more as that was the charge that they would place on us for any future business. I complained to him for the reason that I had set a price on a particular operation that I was working on and set it on the basis that I was on for two months. He said that it was just too bad, that I would have to pay.

Q. That is, the charge of 15 cents a barrel more for loading of your trucks than he would charge if he sold you f.o.b. railroad cars or sold you for rail delivery?

A. At that time he was going to charge me 15 cents more than he had charged me for the first two months I had trucked in there.

7626 Q. Did you inquire of other cement manufacturers at that time as to whether they were imposing similar charges?

A. The thing became standard as far as the companies that we were doing business with.

7627 By Mr. MacIntyre:

Q. Did you inquire, Mr. Callaghan, concerning charges that were being made by others with whom you were not at that time doing business?

A. Yes.

Q. And did you find their charges to be the same?

A. The inquiry in the form of a telephone conversation, was that the fifteen cents additional was a standard.

7628 Q. Can you name some of the other manufacturers who did?

A. To refresh my mind, I believe we called the Allentown, the Lawrence and the Giant Company.

Q. Universal Atlas?

A. Yes, we called them.

Q. Lehigh?

A. Lehigh. In fact, we called most of them on the list.

Q. Alpha?

A. Alpha, most decidedly, for the reason that they had a plant in the near neighborhood of the Vulcanite and the Edison plant, a better trucking distance.

Q. And they replied that they were also imposing the fifteen cents additional?

A. They replied that they would not serve us if we came there with motor trucks.

7629 Q. Now, did I understand from your last answer there, Mr. Callaghan, that these manufacturers that you name had refused to serve you under any conditions?

A. On the trucking question, they refused us flatly.

Q. About what date was that?

A. I don't know whether I can recall it in my mind, but it was at the time that we were being advanced the fifteen cents over the starting charge at the Edison plant. It angered us for the reason—

Mr. Leisure: (Interrupting) I object to that it angered him.

Examiner Norwood: You can give any reasons that were stated by these manufacturers.

The Witness: They gave us no reason.

By Mr. MacIntyre:

Q. How long did you continue to truck from the 7630 Edison plant?

A. About a year and a half.

Q. Why did you stop trucking from them?

A. Well, we had went into the expenditure of about $35,000 with two large pieces of equipment. We had to meet that expense, and we kept on after the additional fifteen cents was added, and we could still beat the old system of handling the cement.

Q. Then why did you discontinue a year and a half later handling it even from the Edison Company by truck?

A. They stopped us entirely.

Q. They would not serve you any longer?

A. They would not serve us any longer.

Mr. Leisure: I move to strike out the previous answer; it was clearly not responsive to the question and simply a statement for the record, and I move to strike it out.

Examiner Norwood: Read the question and the answer.

(The record is read as follows:

"Q. Why did you stop trucking from them?

"A. Well, we had went into the expenditure of about $35,000 with two large pieces of equipment. We had to meet that expense, and we kept on after the additional fifteen cents was added, and we could still beat the 7631 old system of handling the cement.")

Mr. MacIntyre: I will accept the answer even though it may not be responsive.

Mr. Leisure: It is just a statement on the record; it is not responsive to any question.

Mr. MacIntyre: It is a statement of this witness under oath.

Mr. Leisure: I object to that and ask that it be stricken out.

Examiner Norwood: It will just save other questions. I do not see any good purpose being accomplished by striking it if counsel accepts it.

Mr. Leisure: If it is in response to questions, I can object to an improper question, but I do not think that this witness' investment is material to any of the issues in this case, and if a question of that kind is asked, I have an opportunity to object to it.

Examiner Norwood: Objection sustained. Counsel may bring out these matters by other questions.

By Mr. MacIntyre:

Q. Mr. Callaghan, did the discontinuance of trucking or the refusal to load your trucks by the cement manufacturers including those you have named, result in any loss to you?

7632 A. Oh, yes, decidedly.

Q. What was the nature and extent of those losses?

Q. Will you please state the nature and extent of the losses that you have referred to, Mr. Callaghan?

A. The trucks were built especially for this kind of work, and they were no good for any other kind of work that we were in.

7633 Q. May I ask you this, Mr. Callaghan,—did you in any way find yourself able to recoup the losses that you had incurred, or were they absolute losses?

A. Absolute losses.

7636 Q. Can you state whether or not the trucking which you were compelled to discontinue resulted in any competitive advantage in the handling of cement, with respect to other dealers, and would it have continued to result in advantage if you had been permitted to continue the same?

7637 The Witness: The answer that I would like to give to that is that I was leading out as a transportation company, doing business with my own building material company, and if it was successful I would have served every dealer in that section. That was my idea in calling that corporation the Portland Lines.

By Mr. MacIntyre:

Q. What advantages, if any, would have permitted you to gain that position, or did permit you to gain part of the position in that direction?

A. I would profit two ways, by the service to my own corporation and by the trucking profits to the other corporations, similar to mine, by serving them as a transportation corporation.

Q. What would have led the other dealers to have secured your services in transporting cement to them?

A. For the reason that their inventories could have been kept at a low amount, where they would not have to take a carload.

7638 Q. Any other reason?

A. The difference between three hours and three days.

Q. Any other reason, as to price or other factors?

A. Cheaper price.

Q. Did these advantages that you have just related accrue in the conduct of the business as you carry it on the trucking of cement?

A. Very much so.

Examiner Norwood: Tell us about that.

The Witness: We manufacture ready mixed concrete and our demands in those years were in the neighborhood of half a million barrels a year. We were troubled by delays by the railroads, and to keep up our service and our general business we used this method of trans-
7639 portation. In other words, I might say to you that that truck made three trips in 24 hours, using the system, the stagger system of the drivers; so that in one day we would receive three carloads of cement within a three hour period, against the railroad system of delivery, three days.

By Mr. MacIntyre:

Q. Was there any difference in the prices you had to pay, or the cost of cement, laid down on your job, as compared with railroad transportation?

A. Yes, to do away with the double handling. We would have a paving operation; we would have to bring a carload in, send our labor and trucks to the railroad yards, take it to our warehouse, and then our handling it again at the paving operation.

Q. And were you thereby enabled to carry on such benefits?

A. Positively. We could put the night run in, and at seven a. m. in the morning that truck would be at the operation, not at our plant, with a delivery ticket of so many barrels of cement, the one handling.

Q. Did any manufacturer of cement complain about loading?

A. They complained we crossed railroad tracks, and possibilities of hazards, dangers, but we didn't figure the delays.

Q. You accepted that as your responsibility?

A. For the reason that after the first two months
7640 everything would be thrown in our way to make it nasty for us.

Q. Could you have trucked cement to advantage to other sections of the Metropolitan New York area as well as Harrison, at the time?

Mr. Leisure: I object to what he could have done.

Examiner Norwood: He may state.

A. I may say I made a trial run from there to Brooklyn.

Q. Did it prove to your advantage?

A. Very satisfactory.

Q. Now, Mr. Callaghan, have you in connection with the conduct of your business, handled imported cement as well as domestic brands?

A. Yes.

Q. Over what period of time?

A. In 1932, I believe, we sent quite some foreign cement into our mixing plants.

Q. Any other time?

A. 1933.

7641 Q. 1932 and 1933?

A. Yes, sir.

Q. You do not handle it now?

A. No.

Q. And have not handled it since 1933?

A. Have not. That is, we take an odd truck or so or something like that.

Q. Will you please state what reason, if any, you had that led you to stock and sell imported cement?

A. When we were handling it in big boatload lots, bringing it in to the waterfront, we were afraid that we would be penalized to the extent that we could not get any domestic cement.

Examiner Norwood: What made you feel that way about it?

The Witness: Our warehouses, your Honor, were being checked by various salesmen of different companies, and my men reported to me, for the reason to see how much foreign cement we were letting out.

By Mr. MacIntyre:

Q. When you speak of the cement companies, do you mean American cement manufacturers, and if you do, will you please name some?

A. Atlas, Lehigh, Edison, Penn Dixie.

Q. Was the Lone Star among those?

7642 A. I could not recall Lone Star.

Q. At one time did you discontinue the handling of imported cement?

A. In 1933, we were forced to go to Brooklyn by truckload lot to receive cement, and I went over to Brooklyn with our truckman, and we loaded domestic cement, and inquiring of several of the companies—there had been some flare-up about a foreign cement thing up there that

tangled up the whole system. I don't know much about that, but that was the cause of a fight between the foreign cement and the domestic cement. The reason we went by truckload, there was a variance of price somewhere
7643 in the neighborhood of about 25 cents a barrel, so we employed truckmen, professional truckmen, to cart it from the cheaper market, which was Brooklyn, at a saving of 27 cents a barrel.

Q. Even including your trucking charge?

A. Yes.

Q. How long did that situation continue?

A. For six months; in other words, if we wanted to purchase a truckload of cement at Newark or at Harrison, the price would be 40 cents a barrel higher than it would be if we bought it in Brooklyn.

Q. Therefore you had to truck from Brooklyn to overcome that difference in the price?

A. Therefore we went to this wholesale market—I believe they made some kind of a warehouse proposition in Brooklyn, and had our trucks loaded at that point.

Q. And what period was that? Was that in 1934 when these special stocks of domestic cement were placed in Brooklyn?

A. It was 1935 or 1936; I just don't recall the date in my mind at present.

Q. Did I understand you to say that you had previously discontinued the handling of foreign or imported cement?

A. Yes.

Q. What led you to the discontinuance of the handling of imported cement, Mr. Callaghan?

A. For the reason of being penalized. We did not
7644 want to start the same thing in our section that they had in Brooklyn.

Q. Penalized in what manner and what do you have reference to?

A. Delays or—well, we would be in a position to sell no domestic cement.

Q. You would not be in a position to sell domestic cement. What do you mean by that?

A. For the reason that we could not get it if we kept using the foreign cement.

Q. What do you base that statement upon?

A. Well, of course our conditions. Circumstances altered that whole thing, for this reason,—by that time, the United States Government had these agencies, the P. W. A. and stuff like that, and they in their request specified that

all of the cement would have to be of an American manufacture.

Q. Being used on those projects?

A. That is right.

Q. That did not apply on private construction?

A. No.

Q. Could you have continued to sell imported cement on private projects?

A. Oh, yes.

Q. If you could have handled both domestic and foreign?

7645 A. Yes, we were afraid that we would get in trouble, for the reason that most of the work was not of a private nature because it was mostly Government, and we saw that the big amount of cement would be the domestic cement.

Q. Upon what did you base your statements to the effect that you would not be able to handle the domestic if you handled the imported cement?

A. The manufacturers would not sell us.

Q. That is, the domestic manufacturers?

A. That is right.

Q. How did you come to know that?

A. By indirect intimations. They never wrote or threatened us,—it was just left to the common sense of the average fellow in the business to cut out the foreign cement.

Q. Did their salesman tell you that?

A. I think they were pretty smart there. They would not come directly, but they would just hint that that somebody else got hurt, and we took it for granted that that is what that was meant for.

Q. What do you mean by somebody else getting hurt?

A. Some of the New York dealers were not allowed to buy the domestic cement for the reason that they handled the foreign cement.

Q. And after you learned of those things, you dis-
7646 continued handling the imported cement?

A. For the reason that I had contracts on my books of a very large nature, and I did not want to get implicated in a fight.

Q. That is, contracts calling for the use of domestic cement?

A. Yes.

Q. To your knowledge, did other New York dealers discontinue handling imported cement at that time, and for the same reasons?

A. Yes.

Q. Now, as to the price of the domestic cement, Mr. Callaghan, do you find variations or are the prices the same that are quoted you?

A. At the time that we bought the last foreign cement, there was a difference of 42 cents a barrel.

Q. Between foreign cement and domestic?

A. Yes.

Q. Now, as to the prices quoted you by the various domestic manufacturers, do you find any variations in the prices on domestic cement, or are they the same?

A. All the same.

Q. All the same?

A. Yes.

Q. At any given time or on a given date, you mean?

7647 A. Well, I just don't understand that question.

Q. Do you mean they would be the same on June 3rd, today?

A. For instance, if our purchasing department called sixteen cement companies for a price for a certain operation, the prices would be all the same.

Q. And if there is any difference a year from now in the price, that is a year past, as compared with the price today, how did you find the prices a year ago,—were they the same?

A. The same way.

Q. When you speak of the prices being the same, Mr. Callaghan, do you have reference to prices as quoted to you in Harrison, New Jersey, or at some other location?

A. Well, we are restricted to our operation. For instance, if I ask the cement company for a price at Hoboken, New Jersey, they would not sell me there. If I ask at Harrison, New Jersey, they would quote me the price that any other company would quote.

Q. That means then, when you spoke of price a few minutes ago, that you were referring to the prices quoted you at Harrison, New Jersey?

A. That is right.

Q. And no other point?

A. That is right.

Examiner Norwood: Would they ship you a cer-

7648 tain amount for your warehouse for storage and to be shipped out on small orders?

The Witness: The custom of the cement industry as we

see it today—there is two different ways of purchasing; one for a specific contract and the other is for stock warehouse.

By Mr. MacIntyre:

Q. Now, as to the changes in prices of domestic cement, do you find that when there is a change made by one, that the changes are made by all at that time, or are some made at one time by one manufacturer and some changes made a few days or a few weeks or a few months later by others? Will you state what the circumstances are, Mr. Callaghan?

Mr. Leisure: I object to that question. It plainly calls for the conclusions of the witness. He is not going to state any facts, but he is going to state conclusions which he thinks are required by the question. We cannot meet that kind of testimony. If he knows of any specific doings and at what time the changes were made, then that would bring out facts, but the kind of question that is asked here it is impossible to meet, impossible to meet that kind of testimony.

Examiner Norwood: I am going to overrule the objection and ask the witness to base his answer on the

7649 facts of his business experience.

The Witness: To make it a fact, I will call it a past performance.

Mr. Leisure: May we have the time and the names of the companies involved? Otherwise we cannot meet it.

The Witness: I would have records.

By Mr. MacIntyre:

Q. You may mention the last price change that you have within your knowledge, Mr. Callaghan.

A. The experience of the last transaction, making it a fact by experience. A price raise, we heard from two companies on Wednesday, that the prices would be advanced so much. Within the next four days, different ones would come in with the same information.

Q. And on what days were those prices effective? Were they effective on different days or the same day?

A. They would be on a specific date, but with the knowledge to us that any work that we had contracted for would be taken care of, but we must make it specific.

Q. That is on previous purchases?

A. That is right.

Q. But not as to future purchases?

A. Future purchases after the set date of the advance would take the new price.

7650 Q. Did you find whether or not the quotations as made to you provided for any particular period between the date of the quotation and the effective date, as three, or five days?

A. The standard would be within fifteen days.

Examiner Norwood: Would all of these new quotations designate the same day for becoming operative?

The Witness: Yes, your Honor.

By Mr. MacIntyre:

Q. When you spoke of fifteen days, did you mean for shipment within fifteen days, that is, that the price was good for shipment within fifteen days?

A. No. They give fifteen days to announce to the trade the advance of the price of cement. That was the motive of the cement company passing the information to us as a dealer distributor of their product, that after fifteen days the price would have to be bid at the advanced prices.

Q. And all of them who quoted you, quoted that way?

A. Yes, sir.

Q. Mr. Callaghan, do you recall whether or not the quotations on some price changes that you have noted have specified five days between the date of the quotation and the effective date of the price advance or price change?

A. I don't remember the number of days, but they were always different. One would be five, or ten, to fif-

7651 teen days.

Q. But they were advance notices of price advances?

A. Yes, sir.

Q. Mr. Callaghan, have you in your experience as a building material dealer, had any one domestic manufacturer quote you a price different from that quoted by others to you at that time?

A. Never.

Cross-Examination by Mr. Leisure.

Q. Mr. Callaghan, in one of the last questions that Mr. MacIntyre asked you about the five days' notice, is that any advantage to you as a dealer in having the five-day notice from the manufacturer?

A. To a certain extent, yes.

Q. In what way?

A. We have to reach about two thousand customers that we have, and it gives us ample time to notify them on bidding their work after that date.

Q. Then it is better for you than if they raised the price without giving you any advance notice? It gives you that opportunity which you have stated?

A. Yes.

7653 Q. You said you were able to operate with your trucks at a saving of approximately fifty per cent?

A. Yes, sir.

Q. Does that include any distance to which you might wish to ship by truck or is that within a limited area?

A. To explain it properly to you, that we could accomplish that saving over the range of the cement belt which is known as the Lehigh district.

7654 Q. You misunderstood me. I didn't ask you what you could have done. I am asking you, when you state you operated at a saving of 50%, whether or not that was over any given territory.

A. The practical part of it, yes.

Q. What territory would that take in?

A. The Edison, at New Village.

Q. And how far was that from your plant?

A. Single mileage from our plant to their plant, about sixty-five miles.

Q. What other distance was affected by which you could save fifty per cent?

A. We could go five miles more, to the Vulcanite Cement Mill.

Q. And what other company besides Edison did you say you purchased from?

A. Vulcanite.

Q. And that was an additional distance of five miles?

A. Five miles.

Q. Now, in this saving of fifty per cent on those 65 miles, how did you arrive at that figure?

A. The price of the Portland Lines by quotation to our corporation was, I think, 18 cents a barrel, 28 cents a barrel. The price, the freight rate allowed by the cement companies into Harrison was 38 cents, and on top

7655 of that we plussed twelve to fifteen cents for the double handling to our plant at Harrison.

Q. So you figured this by the tariff issued by your own subsidiary?

A. I am just answering your question. There are many other practical ways I could explain.

Q. I am just trying to get how you arrived at it.

A. Yes.

Q. And this Portland Lines was your company?

A. That is right.

Q. So, taking the tariff issued by them as compared with what it cost you by railroad, that is how you arrived at the figure of fifty per cent?

A. That is right; yes, sir.

7658 Q. Going back to this fifty per cent saving that you testified about, did you consider any depreciation as to your trucks when you figured your fifty per cent saving?

A. I might recall to you testifying as Callaghan doing business with the Portland Lines. Portland Lines offered a price to us to deliver that stuff to us. The depreciation question is up to the Portland Lines. They give us the staple price, so much per barrel.

Q. Weren't you one of the owners of Portland Lines?

A. Yes. I am answering your question. But I thought you meant to my yard. You mentioned my yard.

Q. Isn't Callaghan interested in knowing whether the Lines make a profit or not?

A. Positively.

Q. So in that fifty per cent saving you did not take into consideration, as I understand your answer, the depreciation of the trucks?

A. We had no reason to, because the Portland Lines operation, in making up its prices, make its prices subject to taking all its tire and depreciation, to come to that price. We operate scientifically.

Q. How long did the Portland Lines operate?

A. In real action, for a period of about one and

7659 a half years.

7661 Q. I understood you to say that with your trucks, you could beat the system. Did you mean by that the system of rail, freight by rail?

A. Yes, sir.

7662 Q. But you discontinued trucking altogether?

A. Not immediately.

Q. You finally eventually gave it up?

A. Eventually gave it up.

Q. I was merely trying to find out why you gave up trucking since you saved fifty per cent and were able to pass some of that along to the consumer as you testified, why you did not continue to truck?

A. They would not serve us.

Q. They refused to serve you?

A. Yes.

Q. Did you ever visit the plant of the Edison Company in 1931?

A. Yes, sir.

Q. Did you observe there whether or not there was a loading platform erected for loading railroad cars?

7663 A. Railroad cars.

Q. Yes.

A. Yes.

Q. Would you say as a result of that visit there that they had special facilities for loading by rail?

A. Yes.

Q. Didn't they complain to you that they had considerable trouble with loading with trucks?

A. Never complained to me.

Q. Didn't it come to your attention?

A. No.

Q. That the loading of trucks caused them great difficulty?

A. No, sir.

Q. You never heard of it at all?

A. No, sir.

Q. You mentioned the fact that the cement manufacturers were selling cement at the same price. How about the prices that you are quoting with respect to your competitors? Do you find that you and your competitors sell a standard product at approximately the same price at the same place?

A. No, sir.

Q. You do not?

A. I find that we do not sell at the same price.

Q. Not even when you are selling a standard product?

A. It does not mean a thing; it is highly competitive.

7664 Q. Is it fair to say that you were interested in trucking cement because it enabled you to sell cement at a lower price competitively?

A. Yes.

Q. Than other dealers?

A. We did not sell other dealers. We could sell it cheaper than other dealers.

Q. And cheaper than other ready mixed plants?

A. Yes.

Q. Those who did not have trucking facilities?

A. That is correct. I might also mention in answering that question, that you must also remember that at my ready mixed plant I have no railroad siding, where other dealers who are my competitors, have a railroad siding, so they have an advantage of fifteen cents a barrel on me for a start. The creation of the movement of the cement in motor trucks gave me that advantage.

Q. Then part of those savings that you have just described would be between your station and your yard, wouldn't it?

A. I don't understand.

Q. That fifty per cent saving?

A. I don't understand. Will you please repeat it?

Q. I say, part of the saving that you have described to us as being fifty per cent cheaper than the rail shipment is made up of the cost of getting it from the 7665 station to the yard?

A. That is all included.

Q. That is all included?

A. Yes.

Q. In 1932 and 1933 when you were handling the foreign cement that you told Mr. MacIntyre about, what percentage of the foreign cement were you handling at that time as compared with the domestic?

A. Well, we were governed naturally by the demand of certain types of business that required cheap cement, and we used that for their supply. That amounted to about 20 per cent of our volume of business.

Q. But as to the percentages of foreign cement that you were handling, how much was that?

A. I would say about twenty per cent of our business.

Q. During this period of time that you were trucking from Brooklyn, you were hauling from this area and selling at prices cheaper than the designated prices in those districts, were you not?

A. The question in regard to Brooklyn, if I remember it correctly, I stated that we made a trial trip to

Brooklyn. In answering that question, it was my opinion against the opinion of a dealer in Brooklyn that it could not be done with a certain saving that I stated to him, so I made that in the form of a trial and there was no
7666 sale, but it was just a trial load with those powerful trucks that I rode from the New Village plant at New Jersey into the City of Brooklyn. It was not a sale, it was merely a trial.

Q. I am glad you explained that. Now, as to the time when you were purchasing cement in Brooklyn, you were purchasing the cement at the special prices that were made for meeting foreign competition and taking it into other territory and selling it?

A. That is right. The origination of that was caused by the cement companies dropping their price in New York and Brooklyn market.

Q. And you were trucking it out of that market?

A. To take advantage of that, we would send our trucks from New Jersey, Harrison, to Brooklyn, for the reason that the quotation in Jersey was about 25 cents dearer, and we got professional truckmen to cart that stuff from Brooklyn into our plant at a saving of about fifteen plus the fifteen loading.

Q. And was there a considerable amount of that done? How much of that did you do in volume?

A. Oh, we done quite a lot of that. It was a daily affair with us.

7667 Q. Now, you gave up selling foreign cement, as you have told Mr. MacIntyre?

A. Yes.

Q. Was the Government a pretty good customer of yours?

A. No. The requests were coming from these agencies functioning under the Government.

Q. Did that have anything to do with your giving up the handling of foreign cement?

A. Yes.

7697 A. The location in Essex County skirts the State by about ten miles. We were not allowed to buy any cement outside of Essex County by the cement companies.

Q. Which cement company do you have reference to?

A. Every cement company.

Q. I beg your pardon?

A. Every cement company.

Q. Name them.

A. Atlas and—

Q. (Interrupting) Just stop there for a minute. What did Atlas do with reference to that matter, if anything, saying who it was that you talked with, and when?

A. I don't get your question. What these fellows at Atlas say?

Examiner Norwood: What did it do or say, the Atlas?

The Witness: They would tell us that it was out of our territory.

By Mr. Zimmerman:

7698 Q. Who told you that, and when?

A. By identification, I could not identify them.

Q. You don't know, do you?

A. I know that the man answering the telephone told us that. I don't know who said it.

Q. Do you know who it was?

A. No.

Q. Do you know when it was?

A. Any time that I would call.

Q. Do you know any particular day?

A. By day, I could not.

Q. Any particular week?

A. I could not testify to that.

Q. Or month or year?

A. I would term it as a common occurrence.

Q. This is just something that you cannot remember any further than that, isn't it?

A. It is something that is a ruling of the cement companies.

Q. How do you know it is?

A. They told us.

Q. Who told you that?

A. I could not tell you.

Q. Nor you don't know when it was told to you, do you?

A. Well, it put me in a position that if I call up
7699 the Atlas Company and ask for the price, the clerk —I don't know who he is and I don't care—I ask him for a price, and he asks me, "Where is the job?", and I tell him, and he says, "It is outside of the County."

Q. Never mind the speech; just answer the question for a moment.

Mr. MacIntyre: That is what he is doing.

Mr. Zimmerman: Do you want to make one, too?

Examiner Norwood: Answer the question.

By Mr. Zimmerman:

Q. Now, Mr. Witness, tell us if you can name any person with the Atlas Cement Company that ever made any such statement to you.

A. Yes, I can.

Q. All right; what is the name?

A. His name was McCann.

Q. And when was it?

A. I can only tell you the year.

Q. All right; give us that.

A. 1936 and 1937.

Q. He told you twice, did he?

A. More than twice. During that year he told me many times.

Q. Just exactly what did he say?

A. He said, "I am sorry, we cannot ship you there."

7700 Q. What did you say to him?

A. I did not say anything. I said, "I am sorry."

Q. You must have said something to him in order to provoke him to say that to you?

A. To provoke him? That is my business training. It is the laws, what his laws are, and I have to abide by what his laws are.

Q. What did you say to him?

A. "O.K.", and hung up.

Q. That was all the conversation? "We cannot ship you there", and "O.K.", and hung up?

A. That is right.

Q. Did you say anything more than that in that conversation?

A. No.

7701 Q. Didn't you ask him to ship cement to you at any particular place?

A. At the point I called,—East Orange or West Orange.

Q. Now, answer my question; did you or did you not ask him to ship cement to you at any particular place?

A. Yes.

Q. What did you say in that regard?

A. Nothing. You want me to shorten it up, don't you?

Examiner Norwood: He wants to know what you said when you made the request to ship the cement. Explain that.

The Witness: He made the answer: "I cannot ship you in that territory; it is against the rules of the company."

Examiner Norwood: You had given him definite instructions to ship to a particular place?

Mr. Zimmerman: Excuse me, sir. He did not answer your question.

Examiner Norwood: I think so. I will accept his answer.

By Mr. Zimmerman:

Q. What did you say to McCann?

A. "I want to get a thousand barrels at Nutley, New Jersey."

Q. When was that order placed?

7702 A. That order was not placed; I am requesting an order.

Q. When did you ask him to ship a thousand barrels?

A. In the month of September, 1927. He said, "We cannot ship you."

Examiner Norwood: Did he tell you the reason why?

The Witness: By the rules of the company it was out of my territory, your Honor.

By Mr. Zimmerman:

Q. Where did you expect to use that cement, or did you tell him?

A. I asked him to ship me at Nutley.

Q. Where did you expect to use it?

A. On a road job in Nutley.

Q. You did not tell him that?

A. I did not tell him.

7703 Q. I understood you to say this morning that you could always get cement from the Coplay Cement Company by truck if you wished it?

A. Yes, sir.

Q. Where is the plant, where is their plant with reference to yours?

A. Coplay, Pennsylvania.

7704 Q. I mean in miles.

A. About 85 miles.

7706 *Cross-Examination by Mr. Hershberger.*

Q. You spoke this morning about buying sometimes from a company I think you called the National Portland Cement Company?

A. Yes, sir.

Q. Was that the company whose brand went under some other name than National?

A. Pioneer.

Q. You talked about the price from all of these companies being the same when you bought cement, and then you named a number of companies, but you did not

7707 name National. When you bought cement from National, did you get is at any other price than you did from the other companies?

A. No, sir, the same thing.

Redirect Examination by Mr. MacIntyre.

7709 Q. And the invoices on all cement that you purchased from cement manufacturers for rail delivery, that specified that you were to pay freight to the cement manufacturer or the railroad?

A. To the railroad.

Q. You only paid the net amount fo the invoice then, with the freight to the railroad, the net amount, exclusive of the freight, to the cement companies?

A. Yes. The cement company system of billing would be the price of the cement, then less freight. That would be the total.

Q. In other words, no freight was ever included in any price that you paid the cement company for any cement?

A. The price always includes the freight.

Q. Your invoices showed you were to pay that to the railroad company, and you did so?

A. That is right. That is right.

7712 *Recross Examination by Mr. Leisure.*

7713 Q. You said a moment ago that the independent truckers used to charge you fifteen cents a barrel to haul cement to your yard from the railroad siding; is that correct?

A. That is correct.

Q. How far was that?
A. About a mile.
Q. So that they charged you fifteen cents for that distance, and you were going to truck sixty or eighty miles for 27 cents?
A. That is right.
Q. $1.20 a round trip?
A. That is right.
Q. Or $1.60 a round trip?
7714 A. That is right.
Q. Just one more question: If one of these cement companies offered you Portland cement at $2.00 and another offered you Portland cement at $2.25, which one would you have bought from?
A. The $2.00.

JOSEPH J. RYAN, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

I am in the sand and gravel, building material, ready mixed concrete business in the Borough of Brooklyn. We are in the business as a dealer, selling building ma-
7715 terials and building cement, and have been in the business over 50 years. The name of the company is N. Ryan Company, Inc. I am president, having served in that position about a year and a half. I was vice president for 15 years, immediately preceding my present position as president. We have three plants, one located at 9th Street and Gowanus Canal, in Brooklyn, one at Flatbush Avenue and Avenue W and Kent Avenue and Wallabout Canal.
Q. What brand of cement have you handled, Mr. Ryan, during recent years?
7716 A. We have handled most all of the domestic brands in the eastern territory, with some foreign brands.
Q. Were you handling both domestic and foreign brands during 1929 and 1930?
A. We were.
7717 Q. Did you continue to handle both foreign and domestic brands in the years succeeding 1930?

A. We did.

Q. For how long?

A. We were handling it from I think around 1928 carrying right on up to the present time.

Q. Was there any time during that period that you did not handle both foreign and domestic brands?

A. Yes. In December, 1933, through most of the year of 1934.

Q. Why didn't you handle both domestic and foreign brands during that period?

A. During December, 1933, we had a boat load of foreign cement arrive at our Ninth Street dock, and by twelve o'clock on that particular day, I had been notified from most all of the domestic Portland cement manufacturers in this area that they would discontinue to furnish me no more domestic cement.

Q. Did they tell you why they would not continue to furnish you?

A. For the reason that I was dealing in foreign cement.

Q. Did they state under what conditions they would resume selling you?

A. If we discontinued the use of foreign cement, then they would take us off the black list and permit us and
7718 sell us domestic cement.

Q. Can you name some of the companies who so informed you?

A. Yes; Lehigh, Universal Atlas, Penn Dixie, Nazareth,—I cannot just recall them all through, but most of them here—all of them in this area.

Q. Well, all the producers serving this area; that is, the domestic producers?

A. In this Metropolitan area, those that produce and sell from certain plants and ship into this area.

Q. Including those you have named?

A. Yes.

Q. You mentioned—

A. (Interrupting.) Lone Star was another; I forgot that.

Q. You mentioned something about a black list. Will you explain what you meant by the use of that term?

Mr. Leisure: I object to what he meant by the use of the term.

Examiner Norwood: That makes it less vague if
7719 he explains it.

Mr. Leisure: It has not been connected up with any of the respondents, though. I think it should be before he explains it.

Examiner Norwood: I think it has been connected with some of them.

Mr. Hershberger: Which ones, may I ask?

By Mr. MacIntyre:

Q. Well, will you please state where you first heard the term, and who first used the term in any conversation or otherwise with you?

A. Well, the various cement salesmen, and I do think there was one man named Jordan.

Q. Whom did he represent?

A. Nazareth.

Q. What did he say?

A. He said we were on the black list, but they all used the same term, the various salesmen in visiting our office.

Examiner Norwood: You can explain what you understand by the term "black list".

The Witness: Well, it was that of handling foreign cement.

Examiner Norwood: The term "black list".

The Witness: Black list for handling it; we were blacklisted.

7720 By Mr. MacIntyre:

Q. That is, blacklisted by whom?

A. The domestic manufacturers here of the Portland cement.

Q. Serving this market?

A. Yes.

Q. How long did that situation continue, Mr. Ryan?

A. I think with us it was about probably six months.

Q. Was that during 1934?

A. During the early part of 1934.

Q. Will you state how it came to end if it did end at that time?

A. Well, I had contacted one company, and I was endeavoring to try and get domestic cement, because I had—

Q. (Interrupting.) What company was that?

A. It was the Universal Atlas. And I had written two letters to the company, and after writing the first, I was

asked to modify the second letter and stating the fact that I had so much foreign cement stored in the shed, and I agreed to dispose of all of that foreign cement and not to handle and discontinue handling any more of it.

Q. Were you able to buy at that time any domestic brand of cement?

A. None.

Q. At that time you were not able to buy any?

A. Except for specific work by contracts.

Q. Which were under contract?

7721 A. Which were under contract.

Q. Mr. Ryan, I show you a document which has been marked for identification Commission's Exhibit 1176 and ask you to state what you know about that.

A. I wrote that letter (examining).

Q. This is a copy of a letter you wrote?

A. Exactly.

Q. To whom?

A. To the Universal Atlas, Mr. Walter B. Elcock.

Q. Under what circumstances did you write this letter or what led you to write it?

A. He mentioned to me that there was a possibility that he might be able to persuade the remaining domestic Portland cement manufacturers, the fact that they might take us on again and furnish us with domestic Portland Cement as a dealer.

Q. If you did what?

A. Discontinued the use of the foreign cement, the handling of foreign cement.

Q. What does that have to do with the letter? Is this a notice of your taking that action?

A. I stated in this letter here that I would not handle any more foreign cement and that I had in stock so many bags that I would dispose of at the present time, that I had that much in stock. I made a statement.

7722 Q. This is the notice then such as you gave him at the time concerning your decision not to handle foreign cement in accordance with the express desires that they had made?

A. That is it exactly.

Mr. MacIntyre: We offer it in evidence, your Honor.

Mr. Leisure: May I ask the witness a question?

Examiner Norwood: Certainly.

Mr. Leisure: This has a typewritten signature. You wrote the original of this letter, did you, Mr. Ryan?

Mr. Ryan: I did.

Mr. Hershberger: I make the general objection that I think it is too remote. This is subject matter that has nothing to do with any controversy in this case. I cannot see for the life of me how something that happened three or four years ago and has been ceased could possibly be the subject of a cease and desist order in this case.

Examiner Norwood: Is there any further objection?

(No response.)

(COM. EX. 1176 was offered and received in evi-
7723 dence.).

7724 By Mr. MacIntyre:

Q. Mr. Ryan, I notice that letter is dated January 3rd, 1935, opening with the statement, "Confirming my conversation with you." You had conversations concerning this matter with Mr. Elcock then, before writing him?

A. I did.

Q. Did you have correspondence with him or write him letters that preceded this?

A. I wrote him one letter prior to that letter, yes.

Q. On the same subject?

A. On the same subject.

Q. Coming back to this, Commission's Exhibit 1176, your letter to Mr. Elcock, under date January 3rd, 1935, is that, in fact, a letter of your own composition, Mr. Ryan, or did you write this at the dictation of someone else, using someone else's composition?

A. I was requested over the phone to phrase the letter as it is here.

Q. By whom?

A. By Mr. Elcock.

Q. Of the Universal Atlas Company?

A. Of the Universal Atlas Company.

Q. In other words, you wrote down there what Mr. Elcock asked you to write?

A. Exactly.

7725 Q. In the letter that you sent to him?

A. Yes, sir.

Q. Did Mr. Elcock explain to you why he was calling and asking for you to write him such a letter as that?

A. Yes. He was endeavoring to get some of our business and seemed to be one of the companies that was willing to possibly work with us with the foreign cement, and handling the foreign cement at the same time; so he requested that if I could send him either a statement or otherwise, he would be glad to submit it to his interests.

Q. In the previous letters and letter that you wrote Mr. Elcock, did you—did he also dictate those to you over the telephone?

A. In the general term of the word, he did, yes.

Q. I am showing you a document which has been marked for identification Commission's Exhibit 1177, and I ask you to state what you know about that.

A. Well, this letter was not specific enough for him to be of any assistance to us, to permit us to purchase domestic Portland cement.

Q. About the document itself, what do you know about that? What is it?

A. I had stated to him that the fact that we were handling foreign cement—

Mr. Hereshberger: (Interrupting) I object. It 7726 is not responsive.

The Witness: I am referring to the letter.

By Mr. MacIntyre:

Q. What is the letter, if I may ask?

Examiner Norwood: Don't tell what is in it.

Q. (Continuing) Is it a letter, and if so, from whom to whom?

A. It is a letter from our company to the Universal Atlas, Mr. Elcock.

Q. Under what date?

A. Under date of December 27th, 1934.

Q. That is your copy of a letter that you sent him?

A. Exactly.

Q. Concerning this same subject of the letter of January 3rd, 1935, which has been marked as 1176?

A. Yes.

Mr. MacIntyre: We offer this in evidence, that is, 1177 for identification is offered.

Mr. Leisure: May I ask the witness a question.

Examiner Norwood: Certainly.

Mr. Leisure: Did you write the letter, Mr. Ryan?

The Witness: I did.

7727 Mr. Hershberger: No objection.

(COM. EX. 1177 was offered and received in evidence.)

Q. Did we understand you to say that this 1177, which is the letter dated December 27th, 1934, was not acceptable to Mr. Elcock?

A. That is true.

Q. And did he so inform you?

A. Yes, he did.

Q. How?

A. Over the telephone.

Q. And was 1176 the letter of January 3, 1935, an outgrowth of that telephone conversation, as we understood a few minutes ago?

A. It is.

Q. In other words, he dictated the second letter to you over the telephone, to replace the letter which is marked as 1177?

A. That is true. He did.

(Discussion off the record.)

Q. Mr. Ryan, did you write a letter to any other manufacturer of cement, similar to the one that you wrote

7728 to Mr. Elcock of the Universal Atlas under date of January 3, 1935?

A. No, I did not.

Q. That is the only letter of that character that you wrote?

A. The only letter I have written.

Q. What reaction with respect to orders for cement did you get from the Universal Atlas Company after writing them that letter?

Mr. Hershberger: I object to the word "reaction."

Mr. MacIntyre: I will ask him if they filled orders.

By Mr. MacIntyre:

Q. Did Universal Atlas fill orders that you sent them after you wrote this letter?

A. No, they did not.

Q. Did they indicate that they would?

A. They said that they were working on the letter that I had written to them and were endeavoring to try and see what they could do.

Q. Working on it how and with whom?

A. Well, the way that they stated it to me was the rest of the manufacturers of Portland cement—

7729 Examiner Norwood: Were you stating the factual statement of what this company told you?

The Witness: He stated to me that he was working with the rest of the domestic Portland cement manufacturers in this area, to try and persuade them the fact that we could go back and buy domestic cement.

Examiner Norwood: Objection overruled.

By Mr. MacIntyre:

Q. Did the representative of the Universal Atlas and other cement companies notify you that you could buy it from them after that?

A. No, they did not.

7730 Q. Did you place any orders with them to determine whether or not you could buy?

A. I tried to place orders with them and offered to give them the business but they would not accept it.

Q. Mr. Ryan, do you recall whether or not after having written this letter of January 3, 1935 to Mr. Elcott, that representatives of the Universal Atlas and other cement manufacturers notified you whether or not they would sell you or would not sell you cement?

A. Well, I visited various representatives of the different domestic manufacturers in New York City here, and I was not able to purchase Portland cement, domestic Portland cement. I just cannot recollect the exact date, but I did receive a phone call—I don't know whether it was an interval of time of six months or eight months, from Universal Atlas one morning that we were removed from that list and that we were in good graces and could buy it, and by noon of that day, I believe a dozen of the companies had called us up and given us the same message by phone.

Mr. Hershberger: I think he ought to specify whom he talked with in that telephone conversation so that we can check into this.

By Mr. MasIntyre:

Q. You did not send any such notice as this of January 3, 1935 to the other companies, did you?

7731 A. I did not.

Mr. Leisure: I move to strike out this answer un-

less the witness can identify whom he talked with. We cannot meet testimony that he thinks a lot of people called him up. I don't know who called him and there is no way that we can meet it unless he can tell us who talked to him.

By Mr. MacIntyre:

Q. Will you please state if you know who the people were that called you from the various companies, and the various companies that they purported to have represented?

A. Well, I personally spoke to Mr. Elcott who was the first one to give me the message.

Q. What position does Mr. Elcock hold with the Universal Atlas Company?

A. I think he was Metropolitan sales manager. I am not sure, though.

Q. Do you recall the names of any of the representatives of the other companies to whom you talked on that particular day that they notified you?

A. No, I had left the office and the message that came in came through our dispatcher.

Mr. Leisure: I again renew my motion to strike out the answer. It is clearly hearsay. He has some information from someone that other companies called on that 7732 day. It is clearly not proper evidence.

Examiner Norwood: Was the person who received those messages an employee of yours?

The Witness: He was.

Examiner Norwood: And was it his duty to receive such messages?

The Witness: It was.

Examiner Norwood: And transmit them to you?

The Witness: The following day I spoke to some of them myself, and the same situation was clear,—like Burke of the Lehigh, and Dan Long of the Penn Dixie. I cannot just name all of them, but that was two or three that I recall. The following day they had verified it and confirmed it and spoke to me themselves about it.

Examiner Norwood: Motion denied.

Mr. Leisure: We are entitled to have the representatives here for cross examination, your Honor. The fact that an oral conversation took place in the regular course of business would not allow him to state hearsay evidence, I submit, and I again move to strike out that answer.

Mr. Paulson: I do not see that it is hearsay, when he

testified to the fact that he was told. He is not testifying to the substance of the conversation, but to the fact
7733 that he was told.

Examiner Norwood: Motion denied.

Mr. Leisure: It is an oral statement. He is having an oral statement, and he is offering to prove the truth of the statement, and if that is not hearsay, then there is no such thing as hearsay.

Examiner Norwood: Motion denied. Let us get down and try to get through with this witness.

By Mr. MacIntyre:

Q. Have you since January, 1935, or during the period since then been able to buy domestic cement?

A. We have.

Q. Any brand you desire?

A. Yes, we can.

7734 Q. Mr. Ryan, during this period since January, 1935, about which you have just testified, when you were able to buy any domestic brand of cement, were you able to buy it during that period unqualifiedly for future orders as well as spot orders?

A. No, I was not.

Q. How long were you able to buy it without any restriction?

A. I would say with the ending of the year, around 1935.

Q. Have you been able to buy it since then without any restriction?

A. Yes, without any restriction.

Q. Was there any explanation advanced to you by the cement manufacturers? As to the restrictions that did apply at that time?

A. No, nothing otherwise than that I was dealing in foreign cement and they did not care to sell me domestic cement.

Q. Do you recall whether or not during that period that you were paid a visit and had a conversation with Mr. Jordan, a representative of the Nazareth Company?

A. No, he visited our office.

Q. Did he make any statements concerning these restrictions about which we have just been talking?

A. He did.

7735 Mr. Hershberger: Were you there?

The Witness: I was talking with him.

By Mr. MacIntyre:

Q. What if anything did he say concerning restrictions as to future contracts as against spot orders?

A. Well, he said that he regretted that he had to discontinue the company doing business with us, but for the fact that we were put on that list, and he regretted not being able to do business with us.

Q. Was any reference made at that time to any other kind of a list other than the blacklist?

A. Well, I heard the expression "boycotted," with it. That's about all. That and "blacklist." That's about all.

Q. What did you hear about boycotting?

A. It was just termed that we were boycotted by the domestic Portland cement manufacturers for using the foreign cement.

Examiner Norwood: Who told you that?

Mr. Zimmerman: Maybe he said it.

The Witness: Well, it was a general expression of the salesmen.

Mr. Leisure: I move to strike the answer out, your Honor unless the witness can tell us whether or not anyone said it to him.

7736 Examiner Norwood: Motion allowed.

By Mr. MacIntyre:

Q. Mr. Ryan, calling your attention again to Exhibit 1177, I would like to ask you to explain, to the best of your present knowledge and ability the first paragraph in the letter, that is what is meant by the word "agreed" that is used in that paragraph.

A. Well, what prompted the phrasing of that paragraph was that there was another retail company in Brooklyn that had an order or a contract with the Bimco Trading Company for 25,000 barrels of Allberg foreign cement. At the time that I was refused deliveries, the domestic Portland cement companies carried on business with this other retail company and delivered to them domestic Portland cement, and at the same time this retail company was handling the same brand that they refused to carry on with me, for the fact that the retail company had a contract or an order.

Q. Now, as to the word "agreed" there, to what do you refer when you use that in that particular paragraph of that letter? Does that refer to the dealings of the ce-

ment manufacturers to this other dealer that you have just mentioned?

A. Exactly:

Mr. Leisure: Just a minute. I want to move to
7737 strike out the preceding answer as not being responsive to the question. The witness is stating hearsay in regard to that point with respect to these other companies.

Examiner Norwood: Read the question and the answer.

(The record is read.)

Mr. Leisure: I ask your Honor to look at the letter and see whether it has any connection with the answer.

Examiner Norwood: It is not responsive to the question.

Mr. MacIntyre: I ask you, as Mr. Leisure has, to read the first paragraph of that letter and then consider the answer of this witness as an explanation of the paragraph.

Examiner Norwood: Very well. (Reading).

I will deny the motion.

By Mr. MacIntyre:

Q. What did the selling of domestic cement by the American cement manufacturers to this particular dealer who was handling imported cement, and your inability to handle both foreign and domestic cement at the time, have to do with the word "agreed" as used in that particular paragraph?

A. Well, to go into details of this; I visited Mr. Bert Swett of the Lehigh Portland Cement Company at his
7738 office, and I explained to him the competitive conditions in Brooklyn, that there was one retail company there that was able to quote on foreign cement at one quotation and domestic at another, and that I felt that we were entitled to that same consideraion from the competitive standpoint.

Q. Did he agree with you?

A. He did. But he stated to you that the fact that the J. P. Duffy Company had a contract or an order with the Allberg or the Bimco Trading Company, that it was compulsory that he had to take his requirements.

7739 INDEX TO CLARK AND BURNS DATA CONTAINING REPLIES TO QUESTIONNAIRES (24-C) SHOWING VARIATIONS FROM MAXIMUM MILL PRICES (.01 CENT TO MORE THAN 70 CENTS PER BARREL).

(Exhibits 973-1A to 4N inc.)*

24-C Data

Ex. No.	Yes	No	Mill Location	Mill No.	Producer
973–1B					
1C-D		x	Merced, Calif.	446	Yosemite Cem. Corp.
1E		x	Northhampton, Pa.	208	Univ.-Atlas P. C. Co.
1F		x	El Paso, Tex.	395	S. W. P. C. Co.
1G		x	Middle Branch, O.	264	Diamond P. C. Co.
1H	x		Humboldt, Kans.	377	Monarch P. C. Co.
1I	x		Dewey, Okla.	376	Dewey P. C. Co.
1J	x		Dewey, Okla.	376	Dewey P. C. Co.
1K	x		West Conshohocken, Pa.	231	Valley Forge Cem. Co.
1L	x		Superior, O.	266	Superior Cem. Co.
1M	x		Fenton, Mich.	285	Aetna P. C. Co.
1N-O	x		(Chapman) Fogelsville, Pa.	200	Lehigh P. C. Co.
1P		x	Omrod #2	201(a)	Lehigh P. C. Co.
1Q	x		Omrod #2	201(a)	Lehigh P. C. Co.
1R	x		Omrod #3	201(b)	Lehigh P. C. Co.
1S	x		West Coplay, Pa.	202	Lehigh P. C. Co.
1T	x		Bath, Pa.	203	Lehigh P. C. Co.
1U	x		Sandt's Eddy, Pa.	204	Lehigh P. C. Co.
7740					
1V	x		Sandt's Eddy, Pa.	204	Lehigh P. C. Co.
1W	x		Union Bridge, Md.	205	Lehigh P. C. Co.
1X	x		Union Bridge, Md.	205	Lehigh P. C. Co.
1Y-Z	x		Buffalo, N. Y.	206	Great Lakes P. C. Co. (970-10M)
2A	x		Alsen, N. Y.	207	Lhigh P. C. Co. (968-3J)
2B	x		Northampton, Pa.	208	Univ.-Atlas P. C. Co. (968-4V)
2C	x		Hudson, N. Y.	209	Univ.-Atlas P. C. Co.
2D		x	Nazareth, Pa.	210	Penn-Dixie P. C. Co. (968-5L)

Ex. No.	Yes	No	Mill Location	Mill No.	Producer
2E	x		Nazareth, Pa.	210	Penn-Dixie P. C. Co.
2F		x	Bath, Pa.	212	Penn-Dixie P. C. Co.
2G	x		Bath, Pa.	212	Penn-Dixie P. C. Co. (968-6C)
2H	x		Portland Point, N. Y.	213	Penn-Dixie P. C. Co.
2I	x		Portland Point, N. Y.	213	Penn-Dixie P. C. Co.
2J	x		Martins Creek, Pa.	214	Alpha P. C. Co.
2K	x		Jamesville, N. Y.	215	Alpha P. C. Co.
2L	x		Jamesville, N. Y.	215	Alpha P. C. Co.
See also 972-1A to 4K inc.					
973–2M	x		Cementon, N. Y.	216	Alpha P. C. Co.
2N	x		Nazareth, Pa.	217	Lone Star (Pa.) (969-3B)
2O	x		Hudson Upper, N. Y.	218	Lone Star (Pa.) (969-3F)
2P	x		Security, Md.		
2Q	x		Howes Cave, N. Y.		
2R	x		Howes Cave, N. Y.	219	No. Amer. Cem. Corp.
2S	x		Alsen, N. Y. (Catskill)	220	No. Amer. Cem. Corp.
				220	No. Amer. Cem. Corp.
2T	x		Sigfried, Pa.	221	No. Amer. Cem. Corp. (969-5W)
				222	Lawrence P. C. Co.
7741					
2U			(Rider attached to 2V)		
2V	x		Sigfried, Pa.	222	Lawrence P. C. Co.
2W	x		Thomaston, Me.	223	Lawrence P. C. Co.
2X	x		Vulcanite, N. J.	224	Vulcanite P. C. Co.
2Y	x		New Village, N. J.	225	Edison P. C. Co.
2Z	x		New Village, N. J.	225	Edison P. C. Co.
3A	x		Coplay, Pa.	226	Coplay P. C. Co. (969-8V)
3B	x		Nazareth, Pa.	227	Nazareth P. C. Co. (969-9L)
3C	x		Stockertown, Pa.	228	Hercules Ce. Co.
3D	x		Egypt, Pa.	229	Giant P. C. Co.
3E	x		Egypt, Pa.	229	Allentown P. C. Co.

Ex. No.	Yes	No	Mill Location	Mill No.	Producer
3F	x		Evansville, Pa.	230	Allentown P. C. Co.
3G	x		W. Conshohocken, Pa.	231	Valley Forge Cem. Co.
3H	x		Bath, Pa.	232	Keystone P. C. Co. (969-12P)
3I	x		Glens Falls, N. Y.	233	Glens Falls P. C. Co.
3J	x		Glens Falls, N. Y.	233	Glens Falls P. C. Co.
3K	x		Buffalo, N. Y.	234	Federal P. C. Co.
3L	x		Buffalo, N. Y.	234	Federal P. C. Co. (970-10m)
3M	x		Buffalo, N. Y.	234	Federal P. C. Co.
3N	x		York, Pa.	235	Medusa P. C. Co.
3O	x		York, Pa.	235	Medusa P. C. Co.
3P	x		York, Pa.	235	Medusa P. C. Co.
3Q	x		Universal, Pa.	250	Univ.-Atlas P. C. Co.
7742					
3R	x		Bay Bridge, O.	251	Medusa P. C. Co.
3S	x		Wampum, Pa.	252	Medusa P. C. Co.
3T	x		Toledo, (Silica) O.	253	Medusa P. C. Co.
3U	x		Toledo, (Silica) O.	253	Medusa P. C. Co.
3V	x		Ironton, O.	254	Alpha P. C. Co.
973–3W	x		Manheim, W. Va.	255	Alpha P. C. Co.
3X	x		Osborn, O.	258	So. West'n P. C. Co. (970-2T)
3Y	x		Osborn, O.	258	So. West'n P. C. Co.
3Z	x		Osborn, O.	258	So. West'n P. C. Co.
4A	x		West Winfield, Pa.	259	West Penn Cem. Co.
4B	x	x	Omrod #3, Pa.	261	Lehigh P. C. Co.
4C	x		Castalia, O.	263	Castalia P. C. Co.
4D	x		Superior, O.	266	Superior Cem. Co.
4E	x		New Castle, Pa.	267	Lehigh P. C. Co.
4F	x		Port Huron, Mich.	281	Peerless Cem. Corp.
4G	x		Detroit, Mich.	282	Peerless Cem. Corp.
4H	x		Petoskey, Mich.	283	Petoskey P. C. Co.
4I	x		Bay City, Mich.	284	Aetna P. C. Co.
4J	x		Cement City, Mich.	286	Aetna P. C. Co.
4K	x		Newaygo, Mich.	287	Medusa P. C. Co.
4L	x		Bellevue, Mich.	291	Alpha P. C. Co.
4M	x		Bellevue, Mich.	291	Alpha P. C. Co.
4N	x		Bellevue, Mich.	291	Alpha P. C. Co.

7743 INDEX TO CLARK AND BURNS DATA CONTAINING REPLIES TO QUESTIONNAIRES (24-C) SHOWING VARIATIONS FROM MAXIMUM MILL PRICES (.01 CENT TO MORE THAN 70 CENTS PER BARREL).

(Exhibits 972-1A to 4K inc.)*

24-C Data

Ex. No.	Yes	No	Mill Location	Mill No.	Producer
972-1B	x		San Juan Bautista (Calif.)	442	Pac. P. C. Co.
1C	x		Oglesby, Ill.	302	Lehigh P. C. Co.
1D	x		Mitchell, Ind.	303	Lehigh P. C. Co.
1E	x		Manitowoc, Wis.	304	Medusa P. C. Co.
1F	x		Dixon, Ill.	305	Medusa P. C. Co.
1G	x		Limedale, Ind.	306	Lone Star (Ind.)
1H	x		Speed, Inc.	307	Louisville Cem. Co.
1I	x		Speed, Inc.	307	Louisville Cem. Co.
1J	x		Speed, Inc.	307	Louisville Cem. Co.
1K	x		Speed, Inc.	307	Louisville Cem. Co.
1L	x		LaSalle, Ill.	308	Alpha P. C. Co. (975-190)
1M	x		Kosmosdale, Ky.	309	Kosmos P. C. Co.
1N	x		Kosmosdale, Ky.	309	Kosmos P. C. Co.
1O	x		So. Norfolk, Va.	320	Lone Star (Va.)
1P	x		Spocari, Ala.	321	Lone Star (Ala.)
1Q	x		No. Birmingham, Ala.	322	Lone Star (Ala.)
1R	x		New Orleans, La.	323	Lone Star (La.)
1S	x		Kingsport, Tenn.	324	Penn-Dixie Cem. Co.
7744					
1T	x		Kingsport, Tenn.	324	Penn-Dixie Cem. Corp.
1U	x		Richard City, Tenn.	325	Penn-Dixie Cem. Corp.
1V	x		Clinchfield, Ga.	326	Penn-Dixie Cem. Corp.
1W	x		Fordwich, Va.	327	Lehigh P. C. Co.
1X	x		(Boyles) Birmingham, Ala.	328	Lehigh P. C. Co. (975-11J)
1Y	x		Leeds, Ala.	329	Univ.-Atlas
1Z	x		(Sig. Mt.) Chattanooga, Tenn.	330	Sig.-Mt. P. C. Co.
2A	x		Tampa, Fla.	331	Fla. P. C. Co.

Ex. No.	Yes	No	Mill Location	Mill No.	Producer
2B	x		Phoenixville, Ala.	332	Alpha P. C. Co.
2C	x		Ragland, Ala.	333	Nat'l Cem. Co.
2D	x		Knoxville, Tenn.	334	Vo. P. C. Co.
2E	x		Knoxville, Tenn.	334	Vo. P. C. Co.
2F	x		Nashville, Tenn.	335	Hermitage P. C. Co.
2G	x		Cowan, Tenn.	336	Cumberland P. C. Co.
2H	x		Rockmart, Ga.		
2I	x		Portland, Ga.	337	So. States P. C. Co.
*See also 973—1A to 4N inc.				338	Ga. P. C. Co.
972–2J	x		Hannibal, Mo.	350	Univ. Atlas P. C. Co.
2K	x		Mason City, Ia.	352	N. W. States P. C. Co.
2L	x		Duluth, Minn.	355	Univ.-Atlas P. C. Co.
2M	x		Mason City, Ia.	356	(Lehigh P. C. Co.)
2N	x		St. Louis, Mo.	357	Alpha P. C. Co. (975-3Y)
2O	x		Des Moines, Ia.	359	Hawkeye P. C. Co.
2P	x		Des Moines, Ia.	359	Hawkeye P. C. Co.
2Q	x		Davenport (Linwood), Ia.	360	Dewey P. C. Co.
7745					
2R	x		Valley Jct., Ia.	361	Penn-Dixie P. C. Co.
2S	x		Superior, Nebr.	371	Neb. Cem. Co.
2T	x		Superior, Nebr.	371	Neb. Cem. Co.
2U	x		Fredonia, Kans.	372	Cons. P. C. Co.
2V	x		Mildred, Kans.	373	Cons. P. C. Co.
2W	x		Chanute, Kans.	374	Ash Grove L. C. Co.
2X	x		Louisville, Neb.	375	Ash Grove L. C. Co.
2Y	x		Dewey, Okla.	376	Okla. P. C. Co.
2Z	x		Humboldt, Kans.	377	Monarch P. C. Co.
3A	x		Independence, Kans.	378	Univ. Atlas P. C. Co.
3B	x		Iola, Kans.	379	Lehigh P. C. Co.
3C	x		Bonner Springs, Kan.	380	Lone Star (Kans.)
3D	x		Houston, Tex.	390	Trinity P. C. Co.
3E	x		Ft. Worth, Tex.	391	Trinity P. C. Co.
3F	x		Eagle Ford, Tex.	392	Trinity P. C. Co.
3G	x		Dallas, Tex.	393	Lone Star (Tex.)
3H	x		Houston, Tex.	394	Lone Star (Tex.)
3I	x		El Paso, Tex.	395	So. West. P. C. Co.
3J	x		El Paso, Tex.	395	So. West. P. C. Co.
3K	x		Longhorn, Tex.	396	Republic P. C. Co.

Ex. No.	Yes	No	Mill Location	Mill No.	Producer
3L	x		Waco, Tex.	397	Univ.-Atlas P. C. Co.
3M	x		Portland, Colo.	410	Colo. P. C. Co.
3N	x		Trident, Mont.	411	Three Forks P. C. Co.
3O	x		Concrete, Colo.	412	U. S. Port. Cem. Co.
3P	x		Boettcher, Colo.	413	Colo. P. C. Co.
46					
3Q	x		Hanover, Mont.	416	Three Forks P. C. Co.
3R	x		Inkom, Idaho	418	Idaho P. C. Co.
3S	x		Davenport, Calif.	443	Santa Cruz P. C. Co.
3T	x		Crestomore, Calif.	460	Riverside Cem. Co.
3U	x		Oro Grand, Calif.	461	Riverside Cem. Co.
3V	x		Colton, Calif.	462	Cal. P. C. Co.
3W	x		Victorville, Calif.	463	S. W. Port. Cem. Co.
3X	x		Victorville, Calif.	463	S. W. Port. Cem. Co.
3Y	x		Oswego, Ore.	480	Ore. P. C. Co.
3Z	x		Oswego, Ore.	480	Ore. P. C. Co.
4A		x	Oswego, Ore.	480	Ore. P. C. Co.
4B	x		Oswego, Ore.	480	Ore. P. C. Co.
4C	x		Oswego, Ore.	480	Ore. P. C. Co.
4D	x		Lime, Oregon	481	Ore. P. C. Co.
4E	x		Lime, Oregon	481	Ore. P. C. Co.
4F	x		Lime, Oregon	481	Ore. P. C. Co.
4G		x	Lime, Oregon	481	Ore. P. C. Co.
4H	x		Concrete, Wash.	490	Superior P. C. Co.
4I	x		Seattle, Wash.	492	Superior P. C. Co.
4J	x		Irvin, Wash.	494	Spokane P. C. Co.
4K	x		Metaline Falls, Wn.	495	Lehigh P. C. Co.

7747 New York City, N. Y.
Tuesday, June 7th, 1938.

7750 Mr. Wooden: Your Honor, at this time I would like to offer in evidence the papers marked for identification Commission's Exhibit 1178-A, B and C.

1178-A is a statement of the dates on which the Lone Star Cement Company acquired or built its various plants, as furnished by counsel for the Lone Star Company.

1178-B is a statement by years of the Lone Star production and rated capacity of its various plants.

1178-C is a statement of shipments of the various Lone Star Divisions it states.

These were all produced this morning in response to a previous request. They were produced by counsel for the Lone Star Company, and I presume there will be no further identification necessary.

Mr. Leisure: Mr. Wooden and I have a stipulation, your Honor, covering tabulations of this kind wherever the source of material can be checked, without producing
7751 the source material, so we have no objection.

Mr. Zimmerman: I haven't any objections to these exhibits, however, if that is the purpose of your inquiry?

(COM. EX. 1178-A, B and C was offered and received in evidence.)

JOSEPH J. RYAN, previously duly sworn, resumed the stand and testified further as follows:

Direct Examination (Continued) by Mr. MacIntyre.

Q. Mr. Ryan, last Friday, June 3rd, you were being questioned concerning a letter that you sent to Mr. Walter Elcock of the Universal Atlas Cement Company, and after the discussion of that letter that you made for the record, I asked you the question as to whether or not you recalled that after having written that letter, representa-
7752 tives of the Universal Atlas or other manufacturers notified you whether or not they would sell you cement?

Mr. Leisure: Where is that, Mr. MacIntyre?

Mr. MacIntyre: Page 7730.

Q. I will ask him whether after having sent that letter, just merely calling his attention to the testimony of last Friday, I will ask him whether or not after he sent the letter that we referred to on Friday, any cement manufacturer call him thereafter.

A. About three weeks later, Mr. Walter Elcock called me to notify me that we were in a position and removed from the list, to recognize that they would furnish us domestic Portland cement again, and Mr. Dan Long called me, and Mr. Burke of the Lehigh called. Offhand, that is about all that I can recall by name that called me, but the different salesmen had come in and reported from the other companies.

7753 Q. Do we understand you to say that within two weeks after you wrote the letter that Mr. Elcock called you?

A. Yes.

Q. How soon after he called you did Mr. Long of Penn-Dixie and Mr. Burke of Lehigh call you?

A. During the same day.

Q. Did representatives of other manufacturers call you on that same day, in addition to those three?

A. There were other calls came in from the other cement manufacturers, as well as their cement salesmen visiting our office.

Q. What was the nature of their calls? What did they say?

A. They had stated we had been reinstated again and we could purchase domestic Portland cement, but there was one salesman that touched on it named Jordan, of the Industrial, that we were on what they called the probationary list.

Q. Did he say what he meant by that?

A. Yes, he did. He explained that as long as we discontinued the handling of foreign cement, then we could continue to buy the domestic cement, only with that exception, that we must discontinue the foreign cement.

Q. During your testimony on June 3rd, Mr. Ryan, you were requested to explain, on as far as you were able

7754 to do so, the first paragraph of Commission's Exhibit 1177, a letter from you to Mr. Elcock, and I believe before we had the opportunity to have you complete your explanation, that we came to adjournment. I would like

for you to start now and give us as much an explanation of that paragraph as you can.

A. In the first clause, here, or paragraph, it states that we had wanted to be placed, ourselves, the N. Ryan Company—in the same position as our competitors in that area. We stated that, in the letter to Mr. Elcock, there was a condition in Brooklyn where there was a company that was handling the same brand of foreign cement that we were.

7755 Q. What company was that?

A. The J. P. Duffy Company; and they were permitted to continue the handling of it, where I was shut off with domestic for handling that brand.

Q. By whom—if I may ask—permitted by whom to continue handling?

Mr. Leisure: I object to that question. The conclusions of the witness are not important here. He can tell what anybody said to him, but as to his conclusions, as to permissions, I object.

Examiner Norwood: Read that answer.

(The answer is read by the reporter.)

Examiner Norwood: You move to strike that answer. The motion is allowed as to the statement beginning "and they were permitted," and so forth.

You may have this witness tell whether or not the other firm did continue to buy domestic cement; in other words, make his answer more factual; then I see no reason why it should not be admitted.

Mr. MacIntyre: Of course that last question will be stricken, if the answer to the previous question is stricken out?

Examiner Norwood: The objection to the last question is sustained.

7756 By Mr. MacIntyre:

Q. Mr. Ryan, will you please state whether or not J. P. Duffy Company just mentioned by you continued to handle foreign cement?

A. They did.

Q. Did it also continue to handle domestic cement?

A. They did.

Q. Were you at the time handling imported cement?

A. I was.

Q. Were you at that time able to buy domestic cement?

A. I was not.

Q. Why weren't you able to buy domestic cement at that time?

The Witness: Well, I had personal discussion with Mr. Bert Swett of the Lehigh and Mr. Dan Long of the Penn-Dixie, and Mr. Walter Elcock of the Universal Atlas, and they told me that the consensus of the
7757 opinion or the decision of the domestic Portland cement manufacturers in this particular area was that they had decided that they would not recognize me as a dealer if I continued to handle both foreign and domestic.

Q. Was that any different treatment than the treatment that was at that time being accorded to the J. P. Duffy Company just mentioned by you?

A. It was.

Q. Is the reference in paragraph one of Exhibit 1177 to such a situation?

A. I did not get that.

Q. I say, is the reference in paragraph one of Commission's Exhibit 1177 to that situation?

A. It is. I was endeavoring to carry on in competition in the same position as my competitor in Brooklyn, the J. P. Duffy Company.

Q. What is meant by the word "agreed", as used in the first paragraph of that particular exhibit, Mr. Ryan?

7758 Q. Before explaining the word in the paragraph I have just asked you about, read the paragraph for the record as requested by Mr. Leisure.

A. I will. "With reference to us handling foreign cement, we are pleased to state that our position is the same today as it was some time ago when we agreed and understood that our competitors also agreed to discontinue handling foreign cement".

Q. Now, Mr. Ryan, will you please state for the record what you understood to have been meant by the word "agreed" and "understanding" as set forth in the paragraph you have just read.

A. Well, in my conferences with the three that I have named prior—

Q. (Interrupting) Will you please name these so that we will know whom you are speaking about?

A. I am referring to Mr. Swett and Mr. Long and Mr. Elcock.

Mr. Leisure: Could we have the time approximately on some of these conversations?

By Mr. MacIntyre:

Q. Will you please state about the time that you had the conversatons with them?

7759 A. I would say it was in December of 1934 and January of 1935,—those two months.

Q. All right. Will you proceed to explain what was meant by the terms I have just asked you about that you read from in that paragraph.

A. Well, in my conferences with them, I had stated that I had to meet the competitive condition there. I was referring there to my personal conversation with Mr. Bert Swett, and he stated to me that with the J. P. Duffy Company there was an existing order of contract with the Bimco Trading Company, and on the day that I had visited him, there was a boatload of foreign cement of Allborg arrived at the 52nd Street, Brooklyn, and that morning I made a personal investigation and saw the J. P. Duffy & Company trucks unloading the boat. That afternoon I went over to Mr. Swett's office, and he stated to me that this would be the last boat that the Duffy Company would be allowed to take, and in the event that they had taken another boat, they would be shut off the same as we were ourselves.

Q. That was the understanding that you have reference to in the paragraph there?

A. It is.

Q. Did you have similar understandings with the other representatives of the cement manufacturers at that time?

A. Well, with the others it was a general understanding.

7760 Q. To the same effect?

A. The same effect along the same lines.

Q. Mr. Ryan, as to the prices that are quoted you by domestic cement manufacturers, can you state whether or not there are variations in the prices on a given day quoted by any of the domestic manufacturers to you?

A. There is no variation of prices.

Q. In other words, one manufacturer quotes you the same price as all of the others?

A. They do.

Q. And when changes take place in the price, will you state the nature of the changes, whether one is followed by the other at about the same time?

7761 Examiner Norwood: Were there any changes in quotations of domestic cement about this time?

The Witness: That I don't recall at that particular time whether there were any changes or not.

Examiner Norwood: Were there any changes since then?

The Witness: I would not say that at that time, whether there were any changes on the domestic cement prices.

Examiner Norwood: The prices are just the same now as they always have been?

The Witness: Oh, no. There is a change of prices. Probably you might get—

7762 Examiner Norwood: Tell us what did happen in regard to that, if you remember it.

Mr. MacIntyre: I am asking him only for his experience.

The Witness: Well, our experience—

Mr. Leisure: (Interrupting) I object to his experience, unless it is based on some facts. If it is just generalization, I object to it.

Examiner Norwood: Make it factual.

The Witness: I will state the facts the way we received notices.

7764 Examiner Norwood: Now answer my question. The first part of it is whether or not you have any recollection as to any price changes.

The Witness: I have not the definite date of the change, but cement was raised 29 cents a barrel here within the past two years, and that particular notice we received from all the manufacturers in this area, within forty-eight hours, by mail.

Examiner Norwood: All right.

By Mr. MacIntyre:

Q. Was there any difference in the prices as announced by any of the manufacturers who notified you of that change?

A. None.

Mr. Leisure: May we have the time fixed on that last statement of the witness, as to when this change took place?

The Witness: Well, it is the last change.

Examiner Norwood: Approximately when?

The Witness: I have not the definite date, but it is within the period of the last year to year and a half. A year and a half to more. I have not the definite date, but it is the last change.

By Mr. MacIntyre:

Q. Is the price that was made at that time still in effect?

A. Are they still in effect?

7765 Q. Is that price as made then still in effect?

A. Yes, it is still in effect.

Cross-Examination by Mr. Leisure.

7768 Q. So then we have it now that for six months in 1934, the last six months, and the first six months in 1935—

A. (Interrupting) Not the first six months.

Q. (Continuing) The first six weeks in 1935, you were unable to buy domestic cement?

A. Yes. I was unable to buy, I was unable to buy for specific jobs. They had a contract; they fulfilled that contract.

Q. They had a contract with you?

A. For a specific job; but I couldn't use it in the trade.

7769 Q. What proportion of your business, domestic cement business, is done on specific jobs?

A. I would say probably thirty per cent.

Q. Thirty per cent of your domestic, or of your total business?

A. Of our total business.

7774 Q. Now, let us come back to the original question. That on the contract work, most of that is on domestic cement, is it not?

A. It is on domestic cement.

Q. During this period of time that we have finally decided upon as being six months in 1934 and the first six weeks in 1935 that you could not buy domestic cement—that is correct as to time, isn't it?

A. To my recollection I think that is correct.

Q. Did you try to buy domestic cement during that period?

A. I did.

Q. Were you not able to buy it?

A. Except on specific contracts.

Q. And that constituted the majority of your domestic sales?

A. Thirty per cent.

Q. Would you explain for the record what you mean by contract work? Do you mean the project or the contract that names the brand of cement?

A. A contractor names the brand of cement that he requires. Then we make a contract with the cement company, the cement manufacturer, for that specific brand for
7775 the requirements of that particular project. That is what we call specific contract.

Q. Now, as to those jobs, you sold only thirty per cent of the domestic cement which you sold, is that correct?

A. That is thirty per cent of domestic cement purchases would be for specific contract jobs.

Q. And you have not told us yet what happened to the other seventy per cent of the domestic cement that you sold, how you sold it.

A. Well, we would have a customer that would call and give us an order for cement, and we would use our own discretion as to what Portland cement we would deliver him. He did not request a specific brand.

Q. So the other seventy per cent, you want us to understand, was sold in that way without any provision as to the kind of cement or without any provision with respect to the project,—seventy per cent of the domestic cement that you sold is sold that way?

A. Exactly.

Q. That is correct?

A. That is correct.

Q. Now, Mr. Ryan, when you sell both domestic and foreign cement and the contractor leaves it to you to decide which brand, do you furnish domestic or foreign cement?

A. Mostly domestic.

7776 Q. Do you have more profit on domestic than you do on foreign cement?

A. At that period, there was a slightly better margin than there is today.

7779 Q. Did any domestic company refuse to sell you any domestic cement during the year 1935 and starting with January, 1935, and if so when, where, and under what circumstances?

A. To the best of my recollection, in the early part of 1935, and I would state it so, following the later letter, of this particular letter to Walter Elcock (indicating), probably three weeks after that other letter, the later date letter, we were able to purchase domestic cement.

Q. What is the date of the first letter, please?

A. This letter here (indicating) is December, 1934, December 25, 1934.

Q. Do you know the date of the first one?

A. This is the first one. December is the first,
7780 and I don't know what the later letter was following that.

Q. How long after this letter were you able to buy domestic cement?

A. Well, it would be probably eight to ten weeks after the December letter. I was referring to the January letter. I think probably it was in January. Six weeks after the date of the latest letter that I sent to the Universal Atlas.

7783 Q. You had been selling foreign cement for ten years?

A. Off and on.

Q. And there were competitors that had complaints from manufacturers about selling foreign cement, and when a boat arrived, you got all of these telephone calls?

A. Exactly.

Q. Although you had been selling foreign cement for ten years?

A. Although I had been selling foreign cement for ten years.

7784 By Mr. Leisure:

Q. Is that usual, My Ryan, for salesmen of the various companies to call at your place of business and attempt to sell you domestic cement?

A. In soliciting, oh, yes, that is the general procedure.

Q. Practically all of them do it in the Metropolitan area, do they?

A. They do.

Q. When these salesmen were calling, during this time that you were having the trouble of getting domestic cement, didn't the salesman tell you that he was keeping a list of people who sold domestic cement and a list of people who sold foreign cement?

7785 A. He didn't tell me that.

Q. He didn't say anything about that?

A. No.

Q. From what you have said about a blacklist, I understood that you knew he was keeping such a list.

A. I only learned of the blacklist when this Brooklyn Builders was shut off, prior to my shut-off. My shut-off did not occur until I received an order of 50,000 barrels, from the Procurement Division of the Treasury Department of the United States Government, which stated specifically it must be domestic cement, manufactured in the U. S. A.; and after receiving that order is when I had my shut-off.

Q. When these salesmen called during the time that you were having your trouble, did they or did they not tell you that they were keeping a list of people who sold foreign cement as well as domestic?

A. No, they didn't acquaint me with that.

Q. You didn't know anything about that?

A. That was the report or record they may have brought in to their own place, but not to me.

Q. But you knew when you talked to them, that they were finding out what dealers were handling foreign cement, didn't you?

A. No, I did not need to talk to them. I knew it from my own salesmen, not them. I wouldn't take their 7786 information.

Q. I didn't say you needed to know it.

A. Not from them.

Q. That they were finding out who was selling foreign cement?

A. I would say no to that question. I did not know just what they knew, only what they talked to me about.

Q. You didn't know that they were finding out who were selling foreign cement?

A. No.

Q. Did you know that they were finding out that you were selling foreign cement?

A. They knew that. Our trucks were running through the streets with it.

Q. Didn't they know that before this boat load came in in December, 1934?

A. Yes, they did; we were continuously handling it prior to that.

Q. Was there ever a time during that perod that you did not have foreign cement in stock?

A. There may have been, in the intervals of steamers arriving, that we may have run out.

Q. Did you run out in 1934?

A. I don't believe I recollect whether we did or not.

7798 Q. In your talks with these domestic companies and their salesmen, did any of them tell you that they did not consider that you could properly represent them if you were also handling foreign cement?

A. They did not put the question to me in that way to answer your question. I just could not buy it outside of specific work that particular time when I was handling domestic.

Q. And none of them suggested to you that you could not represent them properly as a dealer if you were trying to handle foreign cement as well?

A. I could not represent them because I could not buy their material to sell.

Q. And no salesman ever made any such suggestion to you? My suggestion to you today is the first time that you have ever heard such a suggestion as that?

A. No, they came in and regretted that they could not do business with me; sorry that they lost the business; individually it was not their fault.

Q. You never heard of such a suggestion as that before today?

A. That I could not represent them—

Q. (Interrupting) Properly, if you were also selling foreign cement? Never heard of such a suggestion?

7799 A. Not in those words.

Q. In substance?

A. In substance, the same thing—I could not represent them.

Examiner Norwood: Was there any reason given?

The Witness: At that time that we were not permitted to purchase domestic cement, was the fact that it was just at the time, the particular part of the time, that we were handling foreign.

7800 Q. Did you receive from any of these salesmen any printed policy as to their reasons for not selling dealers who handled foreign cement? Did you ever see such a printed document?

A. To my recollection no, I never saw anything in writing like that.

Q. You never saw a sales policy of any domestic manufacturers, any sales policy?

A. As to foreign cement?

Q. Yes.

A. No, never saw any sales policy.

Q. Now, this letter that Mr. Elcock dictated to you—page 7725 in the record—there is a question here that was put to you, Mr. Ryan, "Q. Did Mr. Elcock explain to you why he was calling and asking for you to write him such a letter as that?" And your answer: "Yes. He was
7801 endeavoring to get some of our business and seemed to be one of the companies that was willing to possibly work with us with the foreign cement, and handling the foreign cement at the same time; so he requested that if I could send him either a statement or otherwise, he would be glad to submit it to his interests."

Do you remember making that statement?

A. May I ask what letter you referred to? There were two. What date letter do you refer to?

Q. I am reading the question and the answer that you gave last week. Do you recall that?

A. I do. I recall it.

Q. So he stated at that time that he wanted to get something from you to submit to his company. Is that right?

A. To submit to the manufacturers.

Q. I read what you said: "so he requested that if I could send him either a statement or otherwise, he would be glad to submit it to his interests."

Didn't you understand by that that he wanted to submit it to his company?

A. That was not the way it was explained to me by Mr. Elcock.

Q. When Elcock called on you was he trying to sell you Universal cement or was he trying to sell you cement
7802 from the industry?

A. Elcock was trying, was calling on me to break down the structure of having our cement shut off.

Q. I asked you what kind of cement Mr. Elcock was trying to sell you when he called on you?

A. He was not trying to sell me any cement at that particular time.

Q. He did not call on you for the purpose of selling you cement at all?

A. Not a specific order, at that time.

Q. I didn't say anything about a specific order. Mr. Elcock did not call on you for the purpose of selling you cement?

A. No, he did not.

Q. What is Mr. Elcock's business?

A. Well, I don't recall what his official position was. I thought it was Metropolitan Sales Manager of the Atlas Cement Company, Universal Atlas.

Q. You say, at that particular time, he did not call to sell you cement. Did he ever call to sell you cement?

A. He did.

Q. And when he called to sell you cement, what brand of cement did he try to sell you?

A. Atlas.

Q. And when he talked to you about this letter, 7803 did he talk to you about selling you cement?

A. Not his brand.

Q. You thought he was trying to sell you Nazareth cement, did you?

A. No, I did not.

Mr. Leisure: I think that is all.

Redirect Examination by Mr. MacIntyre.

Q. Mr. Leisure has just questioned you concerning your statement that Mr. Elcock made to you that he would submit the statement that you wrote out to him to his interests. Will you please again what you understood him to mean by his statement of submitting it to his interests?

A. After my visit to Mr. Swett, Mr. Long and 7804 also to Mr. Elcock, Elcock seemed to be the only individual with an interest of trying to help us to get back in a position to purchase domestic Portland cement.

Q. In that connection, to whom did you understand him to say that he would submit the statement that he asked you to write out, that is, the letter of January 3rd, 1935?

A. He requested, by sending the letter to the Universal Atlas Company, in turn they were to—

Mr. Leisure: I object to what they were to. He can say what Mr. Elcock said to him.

The Witness: Mr. Elcock stated this to me. He stated to me that the manufacturers were going to hold a meeting and they would be glad to submit my statement.

7805 *Recross Examination by Mr. Leisure.*

Q. Mr. Ryan, as to what you understood Mr. Elcock was going to do, he told you there was going to be a meeting of manufacturers, did he?

A. That is what he told me, yes.

7806 Q. Did he tell you where the meeting was going to be held?

A. In New York City.

Q. When was that?

A. Following my second letter.

Q. Soon after your second letter?

A. That is right.

Q. Did he tell you who was going to attend the meeting?

A. No, he did not.

Q. So he just came in and told you that they were all going to have a meeting together?

A. He did not use the word "all." He just said that various cement manufacturers were going to sit down at a meeting.

Q. He told you that?

A. Yes.

Q. Did he tell you that they were going to come to an agreement or an understanding as to what they, the manufacturers, would do?

A. He said that the affidavit would be submitted and that they would act on it that day.

Q. And he confessed this freely to you, that they were going to do that?

A. That is what he stated to me.

7807 JOHN W. WRAY, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

I am a Building Material Dealer doing business
7808 under the name of Waldo Brothers & Company, Boston, Mass. The company has been in existence something over sixty years. I have heard it said that it is one of the largest building material dealers in the Boston area.

Q. Can you give us some idea of the extent or the volume of cement that your concern has handled?

A. Well, it is much smaller today than it was a number of years ago, since the advent of ready-mixed concrete, which has reduced the volume of the retail dealer.

Q. Say down to 1933, what would you say was your approximate average volume per year in cement?

A. I hardly like to answer that without consulting our records.

Q. Just an approximation is all that I care for; whether it is several hundred thousand barrels or a few thousand barrels?

A. Well, we might have handled a hundred thousand; I am not very much interested in cement.

Q. Were you handling both domestic and foreign cement during the year 1933?

7809 A. Yes.

Q. How many brands of domestic cement did you handle?

A. Well, I should say we handled twelve brands, without counting them.

Q. Mostly by eastern manufacturers?

A. Yes.

Q. Had you been handling foreign cement along with your domestic for some years prior to 1933?

A. Well, we handled English cement before American cement reached the perfection of being generally accepted.

Q. Many years ago?

A. That is before my time.

Q. What proportion of your cement business say in 1933 or down through that time, was domestic and what proportion foreign?

A. Well, up to the year 1930, I should say our imports of foreign cement were quite small. The majority would be domestic.

Q. Was it as much as ten per cent?

A. It might be.

A. As much as twenty?

A. I doubt whether it would be twenty per cent.

Q. From whom did you purchase your foreign cement say in 1933?

A. 1933 we were purchasing in smaller quantities

7810 from Jenney & Lux importers.

Q. Did you take delivery of the cement at a warehouse in Boston?

A. Yes, at their warehouse.
Q. Did you send your own trucks for it?
A. Generally hired trucks.
Q. Why did you use hired trucks?
A. Well, towards the latter part of the time when what I can describe as a boycott occurred, all trucks were watched—

The Witneses: Well, I will describe "boycott", according to my understanding, as a threat, an arbitrary threat on the part of somebody, to compel you to pursue a certain course of action. That was being generally
7811 employed in the market at Boston at that time but not to us.

By Mr. Wooden:

Q. As I understand it, you hired trucks to take delivery from Jenney & Lux's warehouse because of that condition?
A. I did latterly so.
Q. You said something about trucks being watched?
A. Yes.
Q. How did you find out that the trucks were being watched from Jenney & Lux's warehouse?
A. Well, we are well acquainted with the employees of the various cement companies, and they informed us that they were working in rotation checking these trucks and checking the dealers who were removing cement. It was, apart from my knowledge, a well known fact.

Mr. Leisure: If your Honor please, unless the witness can tell us who he talked to about it, so that we can meet this testimony, I move to strike out that last answer.

Mr. Wooden: I was going to ask him.

By Mr. Wooden:

Q. Whom that you can name gave you any such information?
A. Well, I will mention Mr. Hagendorn of the Universal Atlas Cement Company who informed me that his salesmen were being used for that purpose at that
7812 time. He was the New England manager.
Q. Can you name any other?
A. Yes, I can mention the salesmen of the Lehigh Cement Company who were employed on the same duties.
Q. Who was that?
A. I don't know whether it was the manager—of course,

all persons do not talk to me because I do not buy cement. They generally talk to the manager of the cement department, and I could not speak with any assurance of being correct of the man in the Lehigh Cement Company.

Q. Are we to understand then that Mr. Hagendorn informed you that his salesmen were working in rotation with other salesmen checking Jenney & Lux's shipments?

A. Yes, sir.

Q. Did the representatives of any domestic cement companies know at that time that you were handling foreign cement from Jenney & Lux's warehouse?

A. Everyone knew it.

Q. Everyone knew it?

A. Everyone.

Q. Did you know whether or not other dealers in Boston were being supplied with domestic cement as well as foreign cement?

A. They were not being supplied with domestic cement after the boycott was instituted.

7813 Mr. Leisure: If your Honor please, I object to the continued use of this expression and ask that the witness be instructed to tell what happened rather than state his conclusions as to what happened.

Examiner Norwood: Read the answer.

(The Answer was read.)

Examiner Norwood: Motion denied.

By Mr. Wooden:

Q. How did you know that other Boston dealers were not being supplied with domestic cement when they were handling foreign cement?

A. In this manner,—there existed at that time an organization known as the Boston Building Material Association, to which most of the dealers in Greater Boston belonged. They attended these meetings and brought in their complaints.

Q. And your company belonged?

A. We belonged to it. I was present at most of the meetings at that time.

Q. Did the association of Boston dealers go on record about the situation in any way?

A. Yes, they passed several resolutions—

7814 The Witness: A resolution was passed disapproving of the action of the cement companies in refusing

to supply cement unless the promise was made in connection with not handling foreign cement?

Mr. Leisure: (Interrupting.) I move to strike that out. The resolution is the best evidence and I object to that answer as being pure hearsay.

Mr. Wooden: I will ask him if he can provide a copy of the resolution.

Mr. Leisure: May I have a ruling?

Examiner Norwood: Not until he has gotten this information.

The Witness: I am not sure whether I could obtain a copy of that resolution. I am not an officer of that body and I believe it is out of existence.

7815 By Mr. Wooden:

Q. Will you make an effort to obtain a copy?

A. I will certainly do so.

Q. And if you obtain it, will you send it to the Examiner?

A. Certainly.

Examiner Norwood: The motion is allowed.

By Mr. Wooden:

Q. Do you know whether or not the resolution that you refer to was transmitted or sent to the domestic cement manufacturers?

A. It was sent to all the leading domestic cement manufacturers doing business in New England. It was also sent to the Cement Institute.

Q. And did you have any conversation with any representative of domestic cement manufacturers about that resolution?

A. Yes.

Q. Will you state with whom and what was said?

A. With Mr. Heckendorn. Most of my conversations were with Mr. Heckendorn.

Q. Will you state what the substance of that conversation was?

Mr. Hershberger: When was this?

Mr. Wooden: And when?

The Witness: If I may reply to this in my own way, I had continuous conversations with Mr. Hecken-

7816 dorn, about this whole situation of this trouble we had at that time, and we were both—at least so I

believed—endeavoring to straighten it out by some mutual agreement, that is to say, agreement by the dealers and the importers.

By Mr. Wooden:

Q. What was the substance of your conversations?

A. A limitation of imports at the Port of Boston.

Q. What do you mean by that?

A. Well, we were endeavoring to strike a bargain to suit the domestic manufacturers, and satisfy the foreign people.

Q. And you made a suggestion, as I understand it, that some limitation be placed upon the imports of cement?

A. Yes.

Q. How did you have in mind that that could be done?

A. Through the only importers who at that time were active.

Q. Who was that?

A. That was Jenny & Lux.

Q. Did you have any conversation with Mr. Stark of the Universal Atlas, about that resolution?

A. I had only one conversation with Mr. Stark at any time.

Q. Was that about the time of these resolutions?

7817 A. Yes.

Mr. Hershberger: When was that, if I may ask?

Mr. Wooden: Yes.

By Mr. Wooden:

Q. When was that?

A. It would be in the early part of 1934, to the best of my recollection.

Q. Can you fix the time, about, on these watching shipments from Jenny & Lux warehouse?

A. About the same period.

Q. It is in evidence here, Mr. Wray, that that took place in July of 1933?

A. July, 1933?

Q. Yes.

A. That would probably be more accurate than my date.

Q. What was the substance of this conversation that you had with Mr. Stark, and who was Mr. Stark?

A. Mr. Stark came to see me in the company of Mr. Heckendorn at the time the dealers were going to hold

another meeting with reference to this foreign cement situation, and we discussed generally the method of settling the difficulty. Mr. Stark discussed the matter with me at considerable length, and he stated that he was personally in favor of some such solution.

Q. As you had suggested, about the limitation of imports?

7818 A. Yes, yes; but, however, nothing further came of it.

Q. Did he say anything as to whether he would refer it to anyone?

A. Yes.

Q. What did he say?

A. He stated that he would refer it to the next meeting of the Cement Institute.

Q. Do you know whether or not any approach or suggestion was made to Jenny & Lux, about the matter?

A. Oh, yes. He talked with Jenny & Lux the same day.

Q. Mr. Stark did?

A. Yes.

Q. Was that before or after he talked with you?

A. I think it was later. In fact, I am sure it was, about four in the afternoon.

Mr. Leisure: Was the date fixed on that item of his talks?

Mr. Wooden: Approximately, I think, that is all.

Mr. Hershberger: What is it, approximately? 1920 or 1930?

Mr. Wooden: 1933, July.

7820 Q. Do I understand, Mr. Wray, that you were having no difficulty in getting supplies of domestic cement, but at the same time other Boston dealers were having difficulty?

A. That is true, sir.

Q. Did there come a time when you had some difficulty in getting supplies of domestic cement?

A. Yes.

Q. Tell us.

A. We were informed by Mr. Heckendorn that we were placed on the blacklist.

Mr. Hershberger: When was this?

By Mr. Wooden:

Q. Will you fix the time of that?

A. I will be glad to fix the time by certain letters I have here.

(Witness produces papers and examines them.)

Would you require those letters?

Mr. Wooden: Yes.

7821 (The papers produced by the witness are handed to Mr. Wooden.)

Examiner Norwood: You may refresh your memory from that paper, and give us the time.

The Witness: Yes, sir. It was August, 1934.

By Mr. Wooden:

Q. Will you give us the full details, so far as you can, of everything that was said on the occasion at which you said Mr. Heckendorn told you you were on the blacklist?

A. Mr. Heckendorn came down to our office and saw our cement buyer and myself, and informed me that "Waldo Brothers had been put on the blacklist; that the blacklist had been previously referred to in conversation, so we knew what that meant.

Q. Previous conversation with Mr. Heckendorn?

A. Yes, sir.

Q. What had been said about the blacklist on this other occasion?

A. It was generally referred to as a blacklist, that the dealers had been put on the blacklist for handling foreign cement.

Q. You got that notice, as I understand it, from Mr. Heckendorn on—can you fix the date any more definitely?

A. No. It was within two weeks of those letters, two weeks previous. In fact, I would say it was within

7822 one week.

Q. Was that the first information that you had that you were placed on the blacklist?

A. Yes.

Examiner Norwood: That means that it was within two weeks of August, 1934?

The Witness: Yes.

By Mr. Wooden:

Q. Did you hear from other companies about it, subsequent to the conversation with Mr. Heckendorn?

A. Yes. We heard from Lehigh Cement Company verbally.

Q. Who?

A. I cannot state, I am sure.

Q. What do you mean by "verbally?"

A. Probably calling us on the telephone.

Q. How soon after you had the conversation with Mr. Heckendorn did that occur?

7823 The Witness: May I change that? I think I said forty-eight hours.

Examiner Norwood: Yes.

7824 Q. Do you know, Mr. Wray, of your own knowledge, that you could not for a time buy from the Lehigh Company?

A. Yes, I do know of my own knowledge, that we could not buy from the Lehigh Company.

Q. Can you name any others?

A. We received a letter from the International Cement Company, that was otherwise known as the Lone Star Cement Company.

Q. Can you name any others that you were unable to buy from?

7825 A. We placed orders with every cement company shipping into New England, to test how far this boycott went, and no one would take our orders.

7826 Q. Did this effort to place orders with all of the companies that you have described, follow this conversation that you had with Mr. Hagendorn?

A. Immediately afterwards.

Q. Did you attempt to place any business with the North American Cement Corporation?

A. Yes.

Q. With what result?

7827 Examiner Norwood: I think he stated that all of these transactions were following these occurrences in 1934 or within a few weeks of that time; is that correct?

The Witness: Yes.

By Mr. Wooden:

Q. Can you say whether these orders were placed by telephone?

A. Mostly by telephone.

Q. And did you get an answer immediately?

A. We got a regretful reply.

7828 Q. Can you say, Mr. Wray, with whom, with what individual, you dealt with at the North American Company?

A. I could not name all of the specific people who would take the orders, because we followed the usual routine. Most of these companies we were already doing business with in varying degrees and volume, and we followed the usual routine in attempting to place more business with them and we also tried to place business with people even though we had not done business with them, but it was unanimous.

Q. What was unanimous?

A. Their reply. They refused to accept any orders.

Mr. Leisure: I object to that and ask that it be stricken out unless the witness specifies whom he dealt with and whether he himself dealt with them.

Examiner Norwood: Objection overruled. You placed those orders yourself, did you not?

The Witness: No, sir; no, I have not. It went
7829 through the manager of our cement department. I told him to place orders with every cement company because I wanted to know what were the facts.

Examiner Norwood: Then later in the due course of business, you ascertained that they had refused to ship you?

The Witness: Yes, sir.

Mr. Leisure: I move to strike out all of the witness' testimony on this subject, it now appearing that the witness did not place the orders himself but is giving us hearsay testimony as to what happened.

Examiner Norwood: Motion denied.

By Mr. Wooden:

Q. Did you hold some telephone conversations with some representatives of domestic cement companies about such orders?

A. Well, my largest business was with the Universal Atlas, and I talked frequently to Mr. Hagendorn about the whole business.

Q. Give us the substance of any such conversation that you had.

A. Do you mean prior to our being refused, or after?

Q. During the time that you were being refused.

7830 The Witness: Your Honor, on being informed that the Atlas Company would not ship us, that we

were on the black list, I stated that they would endeavor to ship us later with great difficulty and not get the orders, which proved to be the case.

By Mr. Wooden:

Q. Did you attempt to place any orders with the Alpha Portland Cement Company?

A. Yes.

Q. With whom?

A. I am trying to recall the manager's name.

Q. Do you know a Mr. Sante?

A. Yes; Sante was the manager at that time.

Q. Where?

A. Of the Alpha Portland Cement Company.

Q. At Boston?

A. At Boston.

7831 Q. What happened?

A. Mr. Sante informed us personally, because he came down to the office—myself and Mr. Colgan—that he was obliged to refuse to take orders because his plant would not ship them.

Q. Did you have any contacts in endeavoring to place orders with the Medusa Company?

A. I am sure we placed orders with them, but I don't know with whom.

Q. Do you know who their local representative was?

A. I believe it was Mr. Bragger, but I am not sure.

Q. Did you have any conversation with Mr. Bragger about the matter?

A. Oh, yes, numerous ones.

Q. What was said?

A. Well, I deplored the stupidity of the cement industry, being a further exhibition of their good taste and intelligence, if that is a proper answer.

Q. What did he have to say?

A. He also deplored it.

7832 Q. Would he take an order?

A. He couldn't take an order because he could not ship it. I was still buying other articles from him besides cement.

Q. From the Medusa Company?

A. Yes; I continued to do so to this day

Q. Did I understand that you were able to buy other things from the Medusa Company, but not cement?

A. Everything but Portland cement.

Q. Was that true of any other companies?

A. I don't think so. I think the other companies were strictly cement companies. I don't think their specialties made any difference.

Q. Did you have any contacts with the Lone Star Company in endeavoring to place orders at that time?

A. I placed an order with them which they declined by writing.

7833 The witness was shown papers marked Exhibits 1179 A, B and C, and said "this (indicating) is a copy of a letter from Waldo Brothers, dictated by L.A.C., which is the Colgan previously referred to, to the Lone Star Cement Company, Statler Building, Boston, which states—". The letter was received in due course of business. That is 1179 B; the witness identified 1179 C as an order from Waldo Brothers Company to Lone Star Cement Company.

Mr. Wooden: I offer those papers in evidence.

7834 Mr. Leisure: No objection, except that there is no showing that this continued beyond 1934, so it seems to me it is objectionable as of today.

(COM. EX. 1179-A, B and C was offered and received in evidence.)

By Mr. Wooden:

Q. Mr. Wray, I notice in Exhibit 1179-B that the Lone Star Company refers to a notification back in 1926 that they would confine their sales to dealers who confined their efforts to domestic cement. As far as you know, had that policy ever been applied in the Boston area?

A. I had never heard of this policy. Up to one week before the date of this letter their salesmen was soliciting us for business.

Q. If there had been such a policy in effect prior to that time in the Boston market, do you think you would have known of it?

Mr. Leisure: I object to that. He might have and he might not have.

Examiner Norwood: Objection overruled.

A. I think I would have known it, and our cement department, which watched all of these things very closely, would also have known it.

7835 The witness was shown papers marked Exhibits 1179 D, E and F, and said that the first letter is a copy

of a communication from Waldo Brothers Company to the Keystone Portland Cement Company under date of August 14th, 1934, relative to an order. The second letter is a communication from the Boston office of the Keystone Portland Cement Company to Waldo Brothers, signed by their district manager, Mr. Power. The third paper is an order of Waldo Brothers Company for 132 barrels of Keystone cement.

Mr. Wooden: I offer those papers in evidence.

Mr. Leisure: May I ask the witness a question?

Examiner Norwood: Certainly.

Preliminary Examination by Mr. Leisure.

Q. What is the memorandum, Exhibit 1179-F?

A. I think that is the filing number.

Q. What is that memorandum? Who wrote it up?

A. Do you mean this order (indicating)?

Q. Yes, the document.

A. This is an order of Waldo Brothers Company signed by L. A. Colgan, the manager of our cement department, to Keystone.

7836 Q. Who is to?

A. The Keystone Portland Cement Company.

Q. Is that the order referred to in the letter?

A. Yes, sir.

Q. Is that the original order?

A. That is the original order.

Q. Where did it come from? Was it sent back by the Keystone Company later?

A. It was sent back. It was returned to us. It was found in our files.

Q. This letter does not refer to it and that is why I am asking you?

A. May I read it? (Reading) No. It does not refer to it, but that is not obligatory.

Q. Well, do you know from looking at this that this was the original order that was sent in this case? Do you have—did you have anything to do with the transaction?

A. I knew an order was placed; that is undoubtedly the original order, because I know the handwriting of the man who wrote it, and I will swear that is Colgan's order, written for us.

(COM. EX. 1179-D, E and F was offered and re-
7837 ceived in evidence.)

7838 By Mr. Wooden:

Q. Mr. Wray, have you had shipments of cement made to you at times by the Medusa Company from its mill at York, Pennsylvania?

A. Yes, sir.

Q. I was asking you just before recess about the various companies that were during this period declining to fill your orders because you were handling foreign cement. What can you say with reference to the Giant Portland Cement Company in that connection.

A. They refused.

Q. Can you say who made the refusal and who received the refusal?

A. No, it would not be possible. I presume for us, the receipt of the refusal was through the cement department.

Q. What about the Nazareth Cement Company?

A. They refused.

Q. Can you say who made the refusal there and to whom it was made?

7839 A. Mr. Barber came over to see us from the Nazareth Company and informed us that they should not ship.

Q. When you say "us," whom do you mean?

A. One of us.

Q. Were you there at the time?

A. Yes.

Q. Did he make the statement in your presence?

A. Yes. I took a keen personal interest in that thing. I don't usually see all these cement salesmen.

Q. How about the Coplay Cement Company?

A. They refused. Mr. Larned of the Coplay Cement Company came over and said he regretted he could not fill our orders.

Q. Did he say that to you, or in your hearing?

A. Yes. He is a personal friend of mine.

Q. What about the Glen Falls Portland Cement Company?

A. They refused, but I cannot tell you who acted for them in refusing, that is to say, who telephoned or talked with us.

Q. All of these refusals that you have described, can you say within what space of time they occurred?

A. They all took place in not longer a period than two weeks from the first advice that we were placed on this blacklist.

Q. That is, by Mr. Heckendorn?

A. Yes.

7840 Q. Was there any domestic cement manufacturer during that period that was willing to and did serve you?

A. Yes, the National Portland Cement Company of the Pioneer Brand of cement, Philadelphia.

7841 Q. What were the most distant Cement companies that sold in the Boston area, as far as you know?

A. As far as I know, the most distant cement companies shipping into the Boston area at any time in my experience had been from Pennsylvania.

Q. Do you mean Medusa?

A. Well, various other plants. We have bought cement from a number of various Pennsylvania cement plants.

Q. The Lehigh Valley District?

A. The whole thing depends on the freight rate, as to whether they can afford to ship.

Q. What is the price of cement, domestic cement, delivered in Boston today?

A. Do you mean the cost to the dealer?

Q. Yes.

7842 A. Well, I suppose I ought to be ashamed to say I do not know, but I really do not follow these cent advances and so on very closely. It is something over $2.00.

Q. Have you found that the price delivered to the dealer in Boston is lower than the points farther west in Massachusetts?

A. There is an arbitrary zone, an arbitrary mill base, I think they refer to it, to meet foreign cement, and cement is shipped, and has been for some time from domestic plants in to Metropolitan Boston at lower prices than cement shipped to places like Worcester and Springfield where the actual freight rate is lower from the Hudson River mills.

Q. How much difference have you known to exist between the price of Domestic cement delivered at Springfield, say, and at Boston?

A. Again I would not be able to tell you accurately. I

would have to refer back to the actual figures, but I think it is about fifty or sixty cents.

Q. A barrel?

A. Yes, a barrel.

Q. And how much lower freight rate would you say there is at Springfield, than from the Hudson Valley?

A. This again is a guess. It is perhaps twenty or thirty cents lower.

7843 Q. What has been your experience in the purchase of domestic cement from the manufactures, as to whether there is any difference in the delivered price at Boston?

A. That is to say, of course there might be a difference for forty-eight hours, when the price change is made, but it is made automatically by other cement companies, who follow the lower or the higher price.

Q. Is that true of advances, as well as in the case of declines?

A. Oh, yes; I cannot recall any exception to that.

7844 Q. Was there a period of time during which you discontinued selling foreign cement?

A. There was a period of about two months during the time that I was negotiating to try to get this whole matter settled, and seeing that I was buying foreign cement, I thought that my hands would be a little cleaner if I did not buy any more until we got this matter settled, but as I did not think that the cement manufacturers were serious or sincere, I resumed buying foreign cement and I still buy it today.

7845 By Mr. Wooden:

Q. Did the domestic manufacturers resume selling you, even though you were handling foreign cement?

A. After a period of around six months, when we never offered them an order, any of them, or listened to any inducements to sell their cement, the Alpha Cement came to us unconditionally, without any representation on our part.

Q. Was that the period during which you were buying from the National?

A. Yes, sir.

Q. You were not able to get all you needed from the National?

A. They refused to ship a car.

Q. Your entire requirement, could they supply?

A. Yes, they were a new plant.

Q. After the Alpha resumed selling you, didn't the others then offer to sell you?

A. A period of around three or four weeks elapsed and then every cement company that was touching into Boston, solicited our business.

Q. Can you fix the time for that?

A. When we resumed with the Alpha?

Q. Yes.

A. I am afraid I can only do it by saying it was,
7846 as far as I remember, seven or eight months after the boycott—I will use that word again, if I am allowed—was instituted against us.

Q. Do you know whether or not the Alpha Company encountered any criticism because it resumed selling?

A. Well, they indicated that they had criticism from their friendly competitors.

Q. Who did that.

A. The sales manager, Mr. Crugen, I think it is, Crugen.

Q. Do you know whether or not, Mr. Wray, dealers in Boston gave any assurances to manufacturers that they would not handle foreign cement?

A. I understand they did.

Q. What is the basis of your statement?

A. I heard them make the statements themselves, myself.

Q. Can you fix the approximate time, and identify any of the dealers from whom this statement came?

A. Well, the Watertown were taken several times off the blacklist, I understand.

7847 Q. Give us the basis of your information.

A. Direct statements made by the president of the Watertown Builders Supply Company.

Examiner Norwood: I think he may round out his story by telling us the information that came to him during the course of the transactions.

By Mr. Wooden:

Q. Will you finish your statement?

7848 A. I simply said that the Watertown Builders Supply Company stated that they had been put on and taken off several times. This process appears to have

been done by the writing of letters, at the request of the cement company. I am glad to say that the cement companies never insulted me in that way.

7850 Q. Mr. Wray, would you recognize the resolution of the Boston Dealers Association if the text of it were shown to you?

A. I probably would, but I would not want to swear to any wording unless I got it from the records on the association.

Q. I am calling your attention to a portion of the
7851 hearing before the Cement Industry Code Authority on this matter in February, 1934, in which Mr. Miller appearing, referred to some action of the Dealers Association of Boston and purported to quote.

Mr. Leisure: What is the exhibit?

Mr. Wooden: It has not been marked. I will ask that it be marked for identification.

(The document referred to is marked "Commission's Exhibit 1180 for identification.")

By Mr. Wooden:

Q. I am showing you a document that I am referring to that has been marked Exhibit 1180 for identification, and calling your attention to page 13 of it at the top, a purported quotation there of the Dealers Association. Will you read it over and see if you recognize it as something that the Boston Association did adopt?

7852 The Witness: I don't think I could give you any help there.

Cross-Examination by Mr. Leisure.

7854 Q. Would you mind answering my question? Do you know what salesman first brought to your attention the existence of a blacklist?

A. Not at this time; so much time has elapsed that I cannot tell you the first salesman that brought it to my attention, but I became aware that a blacklist or boycott, or whatever it may have been described as afterwards, was taking place, and I called up Mr. Heckendorn and I asked him if the Atlas were involved with those and were they blacklisting us.

Q. And having heard in this way that there was a boycott or blacklist in existence, you wanted to know from

Mr. Heckendorn whether your company was on it;
7855 that was your primary interest?

A. I was speedily informed that we were not, because the Universal Atlas was shipping us cars nearly every day.

Q. Did you subsequently talk to Mr. Heckendorn on this subject of the blacklist?

A. Many times. Sometimes at his request.

Q. And the very salesmen that called on your company to sell cement, would tell you, would they not, that they were trying to find out what companies were selling foreign cement in Boston?

A. Well, the cement salesman is the grapevine telegraph. You learn all these things from the cement salesman.

Q. And you don't believe everything you hear?

A. I will leave that to your judgment, as to whether I am one of that kind of suckers.

Q. These salesmen, when they called on you, Mr. Wray, gave your to understand that they were finding out what companies were selling foreign cement in that section, did they not?

A. Well, the impression that they gave me was that they were all mighty bothered about the whole business.

Q. And they wanted to find out whether or not you were selling foreign cement, didn't they?

A. That is an amusing question, if you don't mind me saying so. I will relate a little circumstance—

7856 Q. (Interrupting) I would rather you would not. Do that after the hearing, and I will be very pleased to hear it. Would you mind answering my amusing question?

Mr. Leisure: Will you read it?

(The question is read by the reporter.)

A. They all knew we were selling foreign cement for a considerable period of time.

Q. And they told you, did they not, that they had a list of people who were selling foreign cement?

A. I cannot remember them saying that specifically, no.

Q. Did you come to know that?

A. Why, I took it for granted, having nothing but cement to think about or talk about, they would find some things out, if requested.

Q. With regard to this forty-eight hours in which you

came to know of changes in prices, or, rather, the different cement companies quoting the same price within forty-eight hours, do you remember giving testimony with regard to that since lunch?

A. I think it came up here, yes.

Q. That is, when a price change was instituted, within a short period of time the different manufacturers quoted the same price in that area?

A. Yes. That is not strange in this business. It is done in a lot of other materials besides cement.

7857 Q. That is what I was coming to. You could not sell your products higher than your competitors could sell it, could you?

A. No.

Q. You would be compelled either to meet their price or forego the business, wouldn't you?

A. Perfectly correct.

Q. You sell there, do you not, Mr. Wray, in competition with the local dealers?

A. Yes.

7862 Q. Do you sell retail, foreign cement?

A. Yes, we sell retail to dealers.

Q. And when you sell foreign cement, you are in competition with the domestic cement manufacturers, are you not?

A. Well, I don't think it is worth while for me 7863 to debate that with you.

Q. No, but would you mind answering the question?

Mr. Wooden: It involves a legal conclusion.

The Witness: To some extent—perhaps I am a little dull, but I do not understand that.

By Mr. Leisure:

Q. Well, see if I can clarify it for you. Suppose you are selling foreign cement and you do sell foreign cement, don't you?

A. Oh, yes.

Q. Suppose a domestic manufacturer is trying to sell domestic cement to the same project. If you sold instead of the domestic manufacturer, would you consider that you were in competition with the domestic manufacturer?

A. I have never thought of it in that way.

Q. I am asking you now to think of it for the first time.

A. Well, it has not made any impression on my mind yet.

Q. I am not interested in your impression; I am interested in your answering the question.

A. Well, I cannot answer the question unless I know what you really mean.

Q. I think the question is very clear. Will you read it, Mr. Reporter?

Mr. Wooden: Your Honor, I object to that question as calling for a conclusion.

7864 Examiner Norwood: Objection sustained.

Mr. Leisure: It seems to me, your Honor, we are entitled to go into what this man's activities are and as to what his motives are back of his testimony here today. I think it is pretty clear that he is a competitor and that he has certain motives, and anything that goes to bias, prejudice or favor, I should be allowed to go into.

Examiner Norwood: I think so.

Mr. Leisure: And I submit that if he will not even admit that he is a competitor, that is pretty good evidence of his bias, and I think that I ought to be allowed to go into it.

Examiner Norwood: I think he has answered your questions along that line, and you are now pressing for his conclusion.

7867 Q. That still does not answer my question. Do you hesitate to say that you sell in competition with domestic cement?

A. I am sorry. I don't like to answer questions, unless I understand that my answers have at least a sem-
7868 blance of accuracy. There is so much I can say about that. I do not think it is a fair question.

Q. You do not think it is a fair question to assume that if you sell foreign cement, it is in competition with domestic cement, is that it?

A. No, I don't.

Q. Then, what is unfair about the question I ask you?

A. Because I don't think it leads anywhere.

7873 By Mr. Leisure:

Q. Mr. Wray, a moment ago you referred to a discussion that Mr. Stark had with Jenney & Lux?

A. I only heard about that; I was not present.

Mr. Leisure: Your Honor, in the witness' statement, I move to strike out that conference between Mr. Stark and

Jenney & Lux, it now appearing that the witness was not present, and he is only repeating what he heard from hearsay.

Examiner Norwood: If you don't mind, I will reserve the ruling on that until I can look over the record.

By Mr. Leisure:

Q. Now, Mr. Wray, with reference to this extreme stupidity of the cement manufacturers which you have already described, the letter which has to do with that subject which Mr. Wooden offered in evidence and which you identified, being Exhibit 1179-E, is a letter from the Keystone Portland Cement Company, dated August 18, 1934, ad-
7874 dressed to Waldo Brothers, 202 Southampton Street, Boston, Massachusetts. That is your company, is it not?

A. Yes.

Q. And it says: "We regret that it is not possible for us to ship cement to you from our plant at the present time because of the fact that your company is handling foreign cement, which is in direct competition with our products. We are making every effort to promote the success of domestic business and are complying with all of the requirements of N.R.A., believing that such a policy is in the best interests of our country and its citizens."

Now, you said the business of your company was subject to some N.R.A. Code, did you not?

A. Subject to all of the N.R.A. codes that applied to us, and there were quite a number.

Q. Will you tell us whether or not there was any code that applied to the importers of foreign cement?

A. I don't know.

Q. Don't you know that there was not?

A. No, I don't know there was not.

Q. If there had been, you would have known about it, wouldn't you?

A. That is possible. I was not an importer at the time.

Q. I beg your pardon?

A. I was not an importer at the time.

7875 Q. How long have you been importing foreign goods?

A. When you were referring to Portland cement, I said that I was not an importer of foreign cement, when the N.R.A. Code was in effect.

Q. Without fencing with me, do you or do you not know that there was no code covering the importer?

A. I don't know, and I am not fencing with you.

Q. And would you, in your position, have known if there had been a code covering your business?

A. I was not aware of all of the N.R.A. codes, although of quite a number. That is relatively unimportant. I presume their office help was subject to an N. R. A. code; I presume so. Not having taken legal opinion, I stand to be corrected.

Q. One of the dealers complaining bitterly at this time because of the fact that there was no code covering importers?

A. I never heard of it.

Q. You never heard of it?

A. No.

Q. This letter, did you see it at the time it was written?

A. What letter?

Q. The letter of August 18th, 1934.

A. Are you referring to the Keystone letter?

Q. Yes.

A. Yes, I read it.

7876 Q. And did you understand what the author of the letter meant when he said that they were making every effort to promote the success of domestic business during that time?

A. Knowing the author very well indeed, I did not take very much notice of those somewhat milk and soup sentiments. That is simply written for effect.

Q. You thought that N.I.R.A. meant not National Industrial Recovery; did you think it meant International Recovery of some kind?

A. Well, having worked day and night for the N.R.A. for one or two years while it was in effect, I did not pay lip service, because I worked very hard for it as the records will show. I have no apologies to make about what I thought of the N.R.A.

7877 Q. Then you certainly agree with at least the sentiment expressed in the Keystone letter?

A. Yes. If I believed there was anything sincere in it. Knowing the company, and knowing the writer of the letter, it does not impress me very greatly.

Q. Regardless of the sincerity of Keystone, you were

very sincere when you were selling foreign cement, weren't you?

A. Does that—sincere in what way, please?

Q. You were sincere in trying to make a profit?

A. Certainly. I am always sincere in trying to make a profit.

Q. What was the lip service about this letter that you now find fault with? The letter says that he is making every effort to promote the success of the domestic business. What lip service is there about that?

A. Well, I don't want to go too deeply into that. This particular writer was assistant manager of a small office, and it was nervy to talk about it, I think, personally.

Q. But it is your testimony, not mine. You have characterized his letter as "lip service." I now ask you as to that statement that he was making every effort to promote the success of the domestic business, I want to ask you again: what do you find in the way of lip service in connection with that?

A. If his spoken remarks about the whole busi-
7878 ness are different from the tone of his letter, one might doubt the sincerity of it.

Q. What part of the letter do you find that shows that there was a lack of sincerity? The rest of the paragraph is: "that we are attempting to comply with the spirit of the NIRA." What lip service do you find in that?

A. I have no doubt that they did comply fully. They certainly did, so far as I know.

Q. Then the paragraph ends: "Believing that such a policy is to the best interests of our country." What lip service do you find in that, as an importer of foreign cement?

A. Did you never hear of a mock orator that brings out beautiful sentiments and you were not impressed?

Q. Will you tell me what lip service you had in mind with regard to the statements made by that letter?

A. Am I obliged to answer all these questions?

Mr. Leisure: You might take that up with the Examiner, Norwood.

Examiner Norwood: I think you ought to answer.

The Witness: I don't think the writer was sincere. I think he was writing the letter for effect.

Q. I didn't ask you that. I asked you what part of that letter did you find that lacks sincerity?

Mr. MacIntyre: If your Honor please, it is ap-
7879 parent the witness has answered all the questions Mr. Leisure has put to him. It is now resulting in an argument.

By Mr. Leisure:

Q. Do you consider that when Government buyers did all they could to promote the sale of domestic cement during that period when you were working for the NRA, that they were also doing lip service?

A. I can't say.

Mr. Leisure: That is all.

7882 *Cross-Examination by Mr. Zimmerman.*

Q. Mr. Witness, are there at the present time any conditions existing between your company and the manufacturers of cement along the Eastern Seaboard of which you are complaining as you did in your testimony?

A. No.

Q. How long has it been since there were such practices?

A. Well, I should say since two years at least.

Q. It is approximately, Mr. Witness, three and a half years at least, isn't it, since any of these conditions have existed?

A. Well, let me see—we will have to work our minds back. I should say it is approximately three to three and a half years.

7885 Examiner Norwood: Gentlemen, I think it is very clear that this testimony bears on the issues of this case, I think more than one issue in this case.

Mr. Hershberger: What is one of them?

Examiner Norwood: It is also clear that this testimony is proposed to be connected up with all of the respondents, and if that fails, the testimony will not be considered against some particular respondents, and we shall not proceed to apply it to them.

Redirect Examination by Mr. Wooden.

Q. Mr. Wray, have you bought imported cement at lower prices than you paid for domestic cement?

A. Always. I would not have bought it otherwise.

Q. Have you sold imported cement at lower prices than you sold the domestic cement?

A. Always.

7892 STEPHEN V. DUFFY, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

I am in the retail building materials business, connected with J. P. Duffy Company, as president. I have been in that capacity with that concern for thirty-five years. Among the building materials that I handle is cement manufactured by American cement manufacturers. I have handled and do handle foreign cement or imported cement. I have handled both domestic and foreign cement over

7893 a period of ten years.

Q. Has there been any period within that ten year period in which you have not handled both foreign and domestic cement?

A. Yes.

Q. What period is that?

A. Around 1935.

Q. Beginning in 1935 or ending in 1935?

A. About the end of 1935.

Q. Which of the two did you not handle at that time?

A. I think that was in 1933 that we did not handle both foreign and domestic. We handled domestic, practically, only.

Q. Why didn't you handle foreign or imported cement at that time?

A. I beg your pardon?

Q. Why was it that you stopped or discontinued handling imported cement at that time?

A. We were requested to by the cement companies.

Q. What companies? Can you name them?

A. Practically all of the cement companies.

7894 Q. Do you mean the manufacturing cement companies?

A. Yes.

Q. Are those the ones you had reference to?

A. Right.

7895 Q. Was it profitable for you to handle imported cement at that time, Mr. Duffy?

A. It was profitable.

Q. Why then did you discontinue handling imported cement upon the request of the domestic cement manufacturers?

The Witness: Because we could not get domestic cement and we could not run our business.

By Mr. MacIntyre:

Q. How did you know that you could not get do-

7896 mestic cement?

A. The cement companies refused to give us domestic cement as long as we were handling foreign cement.

Q. How did you learn that they would not give you domestic cement as long as you were handling foreign or imported cement?

A. We sent certified checks and written orders to a number of them, and they were returned with that explanation.

Q. There was no question, then, as to your financial rating or credit in that connection?

A. We had been discounting our bills for fifty years, and we were rated very highly; and they were selling us in other sections of the city.

Q. In returning those certified checks to you, did those cement manufacturers write you stating why they were returning them?

A. I believe they did.

7897 The witness identified Com. Ex. 1181 A as a pho-

7898 tostat copy of the Nazareth Cement Company's letter of December 23, 1933, "Am returning our order for a carload of Nazareth cement and a certified check which accompanied it."; Com. Ex. 1181 B as a photostatic copy of Nazareth Cement Company's letter of January 13, 1934; 1181 C as a photostat copy of Alpha Portland Cement Company's letter of December 22, 1933; 1181 D as a photostat copy of letter of Alpha Portland Cement

Company, January 12, 1933; 1181 E as a photostat copy of Pennsylvania Dixie Cement Company's letter of December 23, 1933; 1181 F as a photostat copy of Penn Dixie Cement Corporation's letter of January 12, 1934. All addressed to J. P. Duffy Company and referring to orders placed with the cement companies for domestic ce-
7899 ment which they refused to deliver.

Mr. MacIntyre: We offer these documents in evidence, your Honor.

Mr. Zimmerman: Your Honor, I will not make any specific objection, but I make the general objection made to the whole line of testimony to have it apply to all of the testimony now being given.

(COM. EX. 1181-A to F was offered and received in evidence.)

Q. These letters are from Nazareth, Alpha and the Penn-Dixie Cement Company, Mr. Duffy. Do you recall whether other companies also refused to sell you cement on or about the date of these letters?

A. Yes.

Q. Will you name some of the other companies, as many as you possibly can?

A. I think there were fourteen in all. All of the cement companies who were accustomed to deliver in to the New York market were approached by us. Certified checks were sent to the Alpha, Edison, Nazareth,
7900 Penn-Dixie, Lone Star, Universal Atlas and Lehigh.

Q. And did they return those checks?

A. Yes.

Q. And on or about the same time or at different times?

A. Approximately about the 27th. The checks were dated December 20th.

Mr. Hershberger: What year was that, please?

The Witness: 1933.

By Mr. MacIntyre:

Q. Were any statements made by cement manufacturers' representatives, salesmen or sales managers, to amplify the reasons why they would not sell you, as to the reasons set forth in the letters that you received?

Examiner Norwood: Answer that with respect to people whom you can name.

The Witness: All of the companies stated that on account of us handling foreign cement they would deliver us no domestic until such time as we cut out the foreign.

By Mr. MacIntyre:

Q. Did I understand you to testify a few minutes ago that you did discontinue handling foreign cement?

A. For a while.

Q. Were you at that time able to resume your purchases of domestic cement?

7901 A. At what time?

Q. When you discontinued handling the foreign cement?

A. Yes.

Q. And today you are of course able to get domestic cement?

A. And foreign, yes.

7902 Q. What I meant by that, Mr. Duffy, is, the prices at which you sold foreign or imported cement, were they lower than the prices at which you sold domestic cement?

A. Yes.

Q. By how much per barrel if you can recall.

A. Ordinarily at least ten cents.

Q. Were there certain classes of trade to whom you cold sell imported cement and to whom you could not sell domestic?

A. No.

Q. Were there classes of trade to whom you could sell domestic and to whom you could not sell imported?

A. Yes, sir.

Q. Now, as to the price changes on domestic cement, can you recall any changes that have taken place in Brooklyn or in New York Metropolitan area on domestic cement within the last two to three years?

A. Net with all discounts off, the price was $2.08.

Q. At what time?

A. Up to the middle of July, 1935. Then it dropped in Brooklyn to $1.72.

Q. Can you state the circumstances of that price change? Was it made effective by one or by a number of the domestic manufacturers on or about the same date or on different dates?

7903 A. Practically all of the domestic manufacturers made it effective on the same date, around the middle of July, I think it was.

Q. Is that also true of other changes, or is there any

difference as to what occurred when other changes were made on the previous date in the price of domestic cement?

A. I think all the cement companies made the changes effective as of the same date.

Q. Now, coming back to this price change about which you have spoken, that is around in July, 1935, placing the price at $1.72 on domestic in Brooklyn, did the domestic manufacturers on or about that date place any stocks of cement for sale at that price in Brooklyn?

A. Yes.

Q. To dealers there or to all dealers? Will you state the circumstances surrounding the placing of such stocks so that we will know just what did occur?

A. The domestic manufacturers put available stocks in the neighborhood of the foreign cement company's source of supply at 25th Street, Brooklyn.

Q. And that was about July, 1935?

A. About July, yes.

Q. What, if any, competitive conditions among dealers did that give rise to within your knowledge, Mr. Duffy?

A. At first there was a ruling that no dealers
7904 could take advantage of that except those who were in the immediate vicinity in Brooklyn. Later that was very hard to control, and trucks came from all districts within a hundred miles of New York and carted the cement at this low price.

Q. That is, they secured it at the low price of $1.72?

A. At that one point in Greater New York, the price was $1.72. At all other points in Greater New York, the price was $2.08.

Q. And trucking was from that point in to the other points?

A. And so it encouraged the people in the $2.08 territory or $2.18 or other price territories to come down to the South Brooklyn neighborhood and get the low price of cement.

Q. Can you name any towns outside of New York from which dealers came to truck cement if they did come in to Brooklyn to get it?

A. Well, they came in from Montauk Point out on Long Island, and they came practically from all points within a hundred miles of New York.

Q. Did any come from the Lehigh Valley District or down from Eastern Pennsylvania?

Mr. Leisure: I object to the witness giving answers to these questions unless he in some way participated in the events.

Mr. MacIntyre: I am merely asking for his knowledge and experience.

7905 Mr. Leisure: If his knowledge and experience are based on hearsay, it is bad, and I object to it.

Examiner Norwood: Objection overruled.

The Witness: My men reported to me that trucks were coming even down from the Lehigh District.

7906 Mr. Leisure: If your Honor please, I object to what has been reported to him as to where the trucks were coming from, as clearly hearsay, and I move to strike the answer out.

Examiner Norwood: Objection overruled.

By Mr. Wooden:

Q. Was it their duty to report to you what they saw with respect to competitive dealers coming into the territory to get cement?

A. Their duty was to report on the conditions outside, that they observed and saw, covering the docks, and what competitors were doing, and what was the general situation. They were the eyes of the business on the outside.

Q. And they were reporting to you what they did see?

A. What occurred during the day.

Q. As to comparative conditions?

A. Yes, sir.

Q. And they reported to you that trucks did come in from the Lehigh District and from Brooklyn?

A. Yes; from a number of points.

Q. Were the names of any of the dealers who did the trucking back into the Lehigh Valley District made known to you by your salesmen?

A. Probably at the time.

Q. You cannot recall the names at this time?

7907 A. I could not recall them.

Q. Now, as to your experience in the trucking of cement from these stocks in Brooklyn to other locations, did you find that you were able to truck from Brooklyn to these other locations at a cost to you laid down at the other locations, lower than the then prevailing prices quoted by the manufacturers at those particular delivered locations?

A. Yes.

7909 By Mr. MacIntyre:

Q. Mr. Duffy, you have testified concerning the manner in which price changes are made by the domestic cement manufacturers at times that quotations are made to you. Will you please state whether or not the domestic cement manufacturers, in making such price quotations to you, have made different prices on a given date; that is, one manufacturer making one price and another manufacturer different prices?

Mr. Leisure: May we have the time and the date specified, as to when any changes took place that Mr. MacIntyre is inquiring about now?

Mr. MacIntyre: We will have Mr. Duffy first keep in mind the price change of July, 1935, when the $1.72 price was placed in Brooklyn.

By Mr. MacIntyre:

Q. Did all manufatcurers quote that price, or were different prices quoted by different manufacturers at that time?

A. They were the same.

Q. All $1.72?

A. Yes, sir.

Q. Has there been any price change since that time?

A. Yes, sir.

Q. What was the price changed to?

A. To $2.08.

7910 Q. About what date was that?

A. About the end of 1935 or the fore part of January, 1936.

Examiner Norwood: How was that different from the previous price of $2.08?

The Witness: That restored the $2.08, which was in abeyance from about the middle of July.

By Mr. MacIntyre:

Q. Did all manufacturers go back to $2.08, or did some of them stay below that?

A. I think they all went back to $2.08.

Q. Are all the prices now $2.08, or has there been a change since then?

A. There has been a four cent raise on account of—No, they dropped back to $1.75 after that.

Q. Was that done by all manufacturers?

A. Yes, sir.

Q. On or about the same date? Was it effective the same date, or different dates?

Mr. Leisure: May we fix the date on the $1.75 prices?

The Witness: Maybe I have a little memorandum that will make it clear.

Examiner Norwood: Refresh your memory?

The Witness: Yes.

7911 (The witness produces paper and examines same.)

The Witness: About December, 1935, to December, 1936, the price was $2.08.

By Mr. MacIntyre:

Q. Was that the price of all the manufacturers, or just part of them?

A. All.

Q. Were all those changes made by all or part of the domestic manufacturers of cement?

A. All manufacturers.

Q. Effective the same date, or on a different date?

A. Effective on the same date.

Q. You spoke about those prices being New York prices. Did you mean at a particular point in New York or is the price different at different points within Metropolitan New York?

7912 A. It is the same in New York. It is the same price. I am talking of the New York price.

Q. That is, stations where you were served?

A. Yes.

Q. What are the locations of your warehouses, where you are served, Mr. Duffy?

A. One in the Bronx, one in Flushing, one in Jamaica, one in Flatbush, one in Bay Ridge.

7913 New York City, N. Y.
Wednesday, June 8, 1938.

7916 STEPHEN V. DUFFY, the witness for Commission, resumed the stand and testified as follows:

Cross-Examination by Mr. Leisure.

Q. Mr. Duffy, on page 7902 of the record, Mr. MacIntyre asked you a question about price changes, and you were giving testimony about the price changing in July, 1935, and I think you said it dropped in Brooklyn to $1.72.

A. Yes.

Q. Then he asked you:

"Can you state the circumstances of that price change? Was it made effective by one or by a number of the domestic manufacturers, on or about the same date or on different dates?"

And you replied:

"Practically all of the domestic manufacturers made it effective on the same date, around the middle of July, I think it was."

Do you recall that?

A. That is right.

Q. Let me ask you, Mr. Duffy, in selling your product, do you find that it is necessary to meet your competitors' prices in order to sell your product?

A. Yes.

Q. And that is true, is it not, of cement, as well as of other standard products?

7917 A. Right.

Q. You could not sell your cement at a higher rate than someone else was selling the same brand of cement in the same community, could you?

A. No.

Q. And how well would you think your organization was functioning, if it took several days to discover a price change made by your competitors?

A. I would say it was functioning very poorly, if I didn't know within half a day.

Q. Then Mr. MacIntyre asked you, on page 7903 of the record "Is that also true of other changes, or is there any

difference as to what occurred when other changes were made on the previous date in the price of domestic cement?" and you answered:

"I think all the cement companies made the changes effective as of the same date."

Now, what is the practice when price changes are being made? Are notices sent out to the trade in advance, giving an advance date of when a change will be made?

A. Most often, yes.

Q. And then do you discover, and have you found in the field, have you found those price changes published, became aware of them by such publication?

A. I get direct letters from the cement companies.

7918 Q. And they set a future date at which a price changed?

A. Yes.

Q. Is that of any assistance to you as a dealer, Mr. Duffy, having that advance information?

A. Well, it is essential.

Q. Now, as to the storing of certain stocks in Brooklyn by the domestic manufacturers, which Mr. MacIntyre inquired of you about, on page 7903 of the record. He asked you:

"What if any competitive conditions among dealers did that give rise to within your knowledge, Mr. Duffy?"

And you answered:

"At first there was a ruling that no dealers could take advantage of that except those that were in the immediate vicinity of Brooklyn. Later that was very hard to control, and trucks came from all districts within 100 miles of New York and carted the cement at the low price."

Now, will you explain to the Examiner what you meant by that answer? I now ask you whether or not you meant that when a certain manufacturer deposited stocks there, they did it with this understanding or ruling, that their company would sell in that district only?

7920 The Witness: To meet the foreign competition, the domestic cement companies put stocks of cement in the neighborhood of the foreign competition's supply, and inasmuch as the foreign competition was affecting principally Brooklyn, the domestic companies said they did not want that cement, that cheap priced cement, going into other districts, and that whoever took it must sell it only in competition with foreign in the territories affected

by foreign. That became very difficult to enforce. The cement companies endeavored to police it by even inquiring from the drivers where they were going and having cement companies' salesmen watch the trucks and follow the trucks, so that it filtered out into Queens and out on Long Island, and as the announcement of the price spread, people came in from Atlantic City, Philadedlphia, Atlantic Highlands, up around the Scranton district, and out as far as Montauk Point, in all kinds of conveyances to get this cheap priced cement. At one time it was necessary to have the police there to keep some order in the confusion of trucks that arrived in such volume. Does that answer the question?

Q. It does, and I want to make it clear to the Examiner what you meant by "ruling", because I want to know whether you meant by that that each company went
7921 and placed its stock of cement in, placed it there under given conditions, or did you want the Examiner to understand that you had some kind of information that there was some agreement among all of the manufacturers to handle this in a certain way? I just want to have it clear just what you meant by "ruling",—that each company did it when it placed its stock there, or whether you have some personal knowledge of some agreement among the manufacturers to do something of that kind?

A. I, of course, would have no knowledge of any agreement among manufacturers. That would be beyond my province.

Q. Then I take it by your answer that what you meant by "ruling" was that each company when it placed the stock there, placed the stock there with a given set of conditions and tried to enforce those conditions, and from what you said, they failed?

A. Right.

7923 *Recross Examination by Mr. Leisure.*

Q. As to the questions his Honor just asked you about uniformity, would it be possible for any cement dealer to sell cement in Brooklyn without it being general knowledge as to what the prices and conditions and terms of sale were; any cement manufacturers, I mean.

A. I doubt it.

Q. That would become public knowedge very quickly, would it not?

A. Yes, I would expect so. They themselves announce those things.

Q. Is it or is it not a fact, in your experience, Mr. Duffy, that often dealers will call manufacturers and tell them; that a manufacturer will receive calls from ten or twelve dealers telling him of a price change?

A. Yes, that is true.

Q. Now, as to the terms and conditions as to the limited area, would you have considered that essential?

A. Essential in what way?

Q. Well, as to the limitations as to how far this territory would cover.

A. The purpose being to compete with foreign cement, and foreign cement having invaded Brooklyn so extensively, I would consider the manuafcturers would be well
7924 justified in lowering their prices in Brooklyn to compete with the foreign cement.

Q. And since it was for that purpose, the territory would necessarily be limited, would it not?

A. I would limit it if I were running it, to the territory where the competition was.

Q. Precisely.

A. I would not go into other territories.

Redirect Examination by Mr. MacIntyre.

Q. Mr. Duffy, his Honor asked you a few minutes ago if imported cement was being trucked, I mean, if the discussion that you had with Mr. Leisure as to trucking related to imported cement, and you said "yes". I believe that you meant domestic, did you not?

A. I corrected it to say "domestic". I think his Honor meant "domestic", because that is what we are talking about, and I corrected him to say "domestic".

Q. As to this ruling that was mentioned by Mr. Leisure and the instructions that were mentioned by his Honor, they were expressed, were they not, by announcements by cement manufacturers as to the conditions under
7925 which these sales would be made?

A. The dealers were constantly kicking about the invasion of their territory by foreign cement, and this was the answer of the manufacturers, to reduce the price of domestic cement where the dealers were in competition with the foreign, and so the manufacturers, I believe, sent out

written letters, written notices on it, at least we understood that it was a spot price liable to withdrawal at any time, and they would not protect future work or do anything else. It was to meet present conditions in that Brooklyn market. Does that answer your question?

7926 Q. And by way of announcements from the manufacturers?

A. Yes.

Q. And effective on or about the same date or on different dates?

A. Well, they would be effective whenever the supply landed there. Some had supplies there on July 11th, and that was the date that it was effective, but other companies had no supplies at that point and it took them maybe three, four or five days, maybe a week, to get organized. Some of the larger companies had been accustomed to using those delivery points and of course they had cars and boats there, and at any time they could make a change on an hour's notice. For the other companies who had no supply, for instance, if Alpha had no cement, and had not been accustomed to selling anybody in that immediate territory, it probably took Alpha five days to get Alpha's cement to that point.

Q. But their announcements announced changed effective on the same date as the others, would they not?

A. There would be no point in making changes on July 11th, for example, in Alpha cement, if no Alpha cement was there until the 15th.

Q. But it was made effective as soon as—

A. It was understood that as soon as the cement came there, you could get it at those points at $1.72.

7927 Q. As to the withdrawal of those stocks of cement and the conditions and restrictions that you just mentioned, were they announced as effective on the same date or on different dates?

A. You have two points there. You are talking of the price, and you are talking of the restrictions.

Q. Let us speak first of the restrictions.

A. The restrictions were not withdrawn by the manufacturers but they were gradually broken down by dealers from other territories coming in and getting cement and dealers from Brooklyn carting cement into other territories. I think some of the Brooklyn dealers even went to Jersey with that cement, I think they went to Newark.

Q. Did you note during your experience of that period whether imported cement was trucked from the docks in Brooklyn to distances beyond Brooklyn, to outlying districts, say up to thirty, forty, fifty miles?

A. Not trucked that far.

Q. How far was it trucked?

A. It was principally sold in Brooklyn.

Q. Wasn't cement sold in Jersey?

A. It may have been. I think Callaghan got some in Jersey, yes, but I think he got that by lighter.

Q. Mr. Duffy, Mr. Leisure asked you whether you found it necessary to sell an item at the same price as that of your competitors in a given case. Now I will ask you to state, in further explanation of your answer that you made to him, whether or not you do, in fact, sell all items of building material at exactly the same prices
7931 as those charged by your competitors on a given date, or whether or not there are variances in prices between the prices you make on some items, such as cement, for example, to some customers, and those made by your competitors to competing customers.

A. We sell at the same price wherever, on account of our better service and quality, we cannot get a higher price.

Q. Do you find in such instances that your better service and quality does afford you a better price than the service and quality of some competitors?

A. In very, very few places.

Q. And that is true on cement, is it, where it is true?

A. I should say that in this market, everything is about at the same; everybody's price lands at about the same figure.

7936-a Examiner Norwood: Confine it to matters brought out on the redirect.

Cross Examination by Mr. Zimmerman.

Q. It was something suggested by Mr. Duffy in listening to the various eloquence of what you consider as going into the price, the impression was received that price as you discussed it was rather synonymous with cost to the consumer. Is that correct, in your opinion, or not?

A. My selling price is based on my purchase
7937 price, if that is what you mean.

Q. No, it is not. What I mean is, that you take into consideration even the consideration of the street and the swiftness of delivery and the length of time required to unload,—all of those seeming to have an effect on what it would cost a customer to get the cement in the condition where he could actually use it on the job?

A. Right.

Q. That seemed to me to be in a sense synonymous with cost to the consumer, the price being just the same as to what it cost the customer. Does that seem to be correct?

A. It seems to be correct that the price I make to the man on the job is his cost on the job.

Q. Now, is there any particular reason why contractors or the people that you do business with prefer to have a delivered price so that they knew just what it will cost them at the job for the cement?

A. They could not do business otherwise.

Redirect Examination by Mr. MacIntyre.

Q. This cost that Mr. Zimmerman has just asked
7938 you about is of course the cost incurred by you in trucks making deliveries on your own responsibility?

A. Yes.

Q. They are not the customers' trucks?

A. No.

Q. If the customer would send the trucks to your place and want delivery to his trucks at your warehouse, then the cost of the transportation would not be figured in your price to him, would it?

A. If he took it from the warehouse, the price would be a little less than it would be on the job, of course.

Q. And would not include any cost of transportation?

A. No, not any cost of the transportation from the warehouse to the job.

Q. That would be transportation that he would be performing for himself at his cost?

A. We would not give him the full trucking allowance.

Q. But you would make some allowance for that?

A. Make some allowance because we have to load it on his truck and we have to handle it and handle odds and ends.

Mr. MacIntyre: That is all.

Examiner Norwood: And do you sell to some customers that way at the warehouse?

The Witness: Very few.

7939 FRANK M. DAIN, called as a witness on behalf of the Commission, being first duly sworn, testified
7940 as follows:

Direct Examination by Mr. Wooden.

I am president of the Katonah Lumber, Coal & Feed Co., engaged in the retail lumber, mason supplies, coal, feed and hardware business at Katonah, New York, with branches at Bedford Hills and Golden Bridge, N. Y., all in Westchester County. I purchased the Katonah Lumber Company on April 1, 1929. I am the majority owner of the Richfield Supply Company, Richfield, Conn., a director in the M. Dain & Sons Company, Poughkeepsie, vice president of the Dain Supply Company at Mahopac
7941 and Carmel. All of those concerns handle building material and they all handle cement.

Q. Taking your yards in Westchester County area, what would you estimate the amount of cement handled per year to be?

A. Well, they are all in the Westchester County area. The Richfield yard is just two miles over, and the Mahopac and Carmel are only about three miles over the Westchester line.

Q. Give us those.

A. In Mahopac and Carmel, New York, they are in Putnam County, but just over the Westchester line, so when you say the Westchester area, do you include them?

7942 Q. Yes, I think you had better.

A. I have no knowledge of what the Peekskill, Mahopac and Carmel yards use.

Q. As to the yards that you do have knowledge of, what would you say their total cement requirements are?

A. At Bedford Hills, Katonah and Golden Bridge, we use a total of about 5,000 barrels a year in the three yards. Richfield would probably use 3,500.

Q. Do you buy cement from a number of the domestic cement manufacturers?

A. We buy from the Universal Atlas, the Penn Dixie, Allentown, and in the last six months a bit from Nazareth. We did buy from Vulcanite, but we practically stopped that.

Q. Are you solicited to buy from other manufacturers than the ones that you have named?

A. Very few. The Lone Star cement man used to come in; he stopped. The Lehigh cement man comes in very seldom. The Edison man comes in very seldom. The National Cement Company man came in once or twice and since I gave him an order and he refused to either accept it or reject it in writing, he has not been in at all.

Q. Do you have some solicitation by mail?

A. No, sir; cement companies, so far as I—so far as my knowledge goes, write no letters.

Q. Do you get written quotations by mail from
7943 various companies?

A. Yes.

Q. What has been your experience with regard to whether or not the quotations you get for the delivery at your yards are the same from the various companies that make the quotations?

Mr. Leisure: I think the witness said that the cement companies did not write.

The Witness: They send price lists; I corrected that later.

Examiner Norwood: Did you answer that question?

The Witness: They send price lists.

By Mr. Wooden:

Q. Price quotations?

A. Yes.

Q. What is your experience as to whether or not those price quotations that are sent you show the same price at the same time from various companies?

A. Every quotation so far as my knowledge goes that has been made to us has been exactly the same within any one week.

Q. Was that the case whether it is an advance or a decline in price?

A. It is exactly the same whether it is an advance or a decline.

7944 Q. Do you get the quotations from different companies ordinarily at the same time?

A. Not in the same mail and not on the same day. It is customary for a quotation to come in from one cement manufacturer giving the date of the change. Probably in the next mail will come in another one, and over the next three or four days, a dozen will straggle along. It has been customary for a different manufacturer to make the initial change in time. Never in the last year—never in the last two years—has the same manufacturer made the initial change twice in succession.

Q. State whether or not you have found that there is anything in your observation in the way of a rotation in the order in which those changes come?

A. I have made no observation of that.

The witness was shown papers marked for identification as Ex. 1182 A to L inclusive and said: "Well, the first one is a price quotation from the Alpha Portland Cement
7945 at $2.31 in cloth sacks—". They are price quotations.

Q. All of them? Will you give the companies the dates on which they were effective, as well as the dates on which the announcement was made?

A. The Alpha Portland Cement Company dated November 17, effective November 22.

By Mr. Zimmerman:

"What is the year, please?

1937. Universal Atlas, dated November 17, effective November 22. Allentown Portland Cement Company dated November 17, effective November 22. Another Allentown Portland Cement Company dated November 17, effective November 22."

Examination by Mr. Wooden.

Another delivery at a different price. The first is $2.31 and the second is $2.32. The Allentown Portland Cement Company, dated November 17, effective November 22, price f.o.b. cars Tuckahoe, $2.14. The Hercules Company,
dated November 17, effective November 22, 1937.
7946 They are all quotations dated November 17 and are
7947 effective November 22. He has not named all the companies yet from which they were received. They were all received at his place of business in the regular course of mail. He notes on these various papers some handwrit-

ten notes, in pencil. He made those notes when they came in, as soon as he opened the mail. He wrote on them the day and hour they were received, together with any other pertinent facts that he could think of at the time.

Mr. Wooden: I offer these papers in evidence, your Honor, including the pencil notations which the witness says he placed on there at the time.

Mr. Leisure: I have not read the pencil notations, but I submit there is no occasion for this witness submitting pencil notations in this evidence in this case. He is on the witness stand here, under oath, and anything he has to say can be brought out under oath. I am going to object now, without reading them, to any pencil notations.

Examiner Norwood: He may use them to refresh
7948 his memory.

7949 The Witness: If you please, I think I erred in an answer to one of your questions, Mr. Wooden, as to whom I purchased cement from. I think I neglected to name the Penn Dixie Cement Company as one of my sources of supply.

(COM. EX. 1182-A to L was offered and received in evidence.)

Mr. Leisure: Would you mind if I asked him one question?

Mr. Wooden: Not at all.

7950 Mr. Leisure: Are those all the quotations you got, Mr. Dain?

The Witness: On that particular change in the price, that's all.

By Mr. Wooden:

Q. Mr. Dain, will you state when you received in the mail each of those quotations that are comprehended in Commission's Exhibit 1182-A to L?

A. May I refresh my memory?

Q. Yes.

A. I received the Alpha Cement quotation at 9:30 a. m., in the 9:30 mail November 17th.

Q. Is that the same date?

A. That is the day that the quotation is dated. I received the Universal Atlas Cement Company quotation at exactly the same time. I received the Allentown Portland Cement three quotations in the 9:30 a. m. mail, November 18th, 1937. I received the Hercules Cement Corporation quotation in the same mail with the Allentown; likewise the

Vulcanite; likewise the Nazareth; likewise the Keystone; likewise the Lehigh; likewise the Lone Star; likewise the Edison Cement Corporation.

7951 Q. Do you know whether the prices quoted for delivery at your places of business—do you know how they are calculated and how they are arrived at?

A. They are set up on an arbitrary price basis.

Q. Will you explain what you mean by that?

A. I mean that in order to compete with foreign cement there is still an arbitrary setup at the Seaboard, particularly in my case at New York City. At certain, I won't say specified—at a certain distance away from the Seaboard, the prices are based—

Examiner Norwood: How do you know how they are based?

The Witness: I have a set of quotations made in Westchester County by one of the District Managers of one of the cement companies, in writing.

7952 Mr. Leisure: That would not show how they were based, your Honor.

The Witness: The facts would speak for themselves.

Mr. Wooden: It would show whether they are arbitrary zone prices to meet foreign competition.

By Mr. Wooden:

Q. You spoke of this arbitrary price zone being set up to meet foreign competition. What is the basis of your information on that?

A. I do not understand your question.

Q. What is the basis of your information as to your being in an arbitrary price zone, where the prices are set in order to meet foreign competition?

A. That is quite a complicated thing, and I don't know if I can work it out in my own mind or not, but I have the price in New York City; I have the freight rate to New York City from the various mills from the two districts, namely Heligh and Hudson; I have the price, the f. o. b. price basis at, I will say, Brewster. I might have to change that town. I have the freight rate from the two districts, namely, Lehigh and Hudson. The Brewster price is based on what has been told me was the f.o.b. mill—

Examiner Norwood: (Interrupting) Told you by whom?

The Witness: Salesmen.

7953 Examiner Norwood: For one of the cement companies?

The Witness: Yes.

Mr. Leisure: May we have the time and the man that told him?

The Witness: Yes, sure; I will give it to you if you want. I will have to refresh my memory. And that price at Brewster agrees with the f.o.b. mill base plus the proper freight to Brewster. The price at New York City does not agree.

By Mr. Wooden:

Q. In other words, that is an arbitrary price?

A. That is an arbitrary price. Then there is a step-up from the New York City arbitrary price to Brewster where it reaches what I term the mill base. All of those towns, or as we go from New York City and approach Brewster, the difference absorbed by the arbitrary price set up becomes less.

Q. Is Brewster the place where the arbitrary prices cease to be effective?

A. I would have to check that before I definitely answer, but my understanding is that Croton Falls, which is four miles south of Brewster, is the place.

Q. From there on, do I understand you to say that the delivered prices are the equivalent of the mill base price plus the freight?

7954 A. Correct.

Q. Full freight?

A. Correct.

Mr. Leisure: I think the record should show whom he is talking about, whose mill base price.

Mr. Wooden: He mentioned Lehigh Valley and Hudson base prices.

Mr. Leisure: That covers a lot of territory.

Examiner Norwood: Can you give the mills?

The Witness: The freight rates appear to be from districts. For instance, Fordham, New York, from the Lehigh Valley is 52 cents a barrel; from Hudson it is 50 cents a barrel, Tuckahoe is 53 cents from Lehigh and 53 cents from Hudson.

Mr. Leisure: May we have from what point in the Lehigh Valley the witness is talking about?

The Witness: I don't know whether I can give you

that or not, but the cement mills in the Lehigh Valley are fairly closely grouped, and it is my understanding that the freight rates are all the same. I think I made a notation. (examining paper) No, I did not. Northampton, I believe.

By Mr. Wooden:

Q. Mr. Dain, do I understand that your various yards are located at different points, but all of them in this
7955 arbitrary price zone?

A. Yes, sir.

Q. Some of them get varying delivered prices that vary from the others, depending on this step up that you speak of?

A. In the record there was just submitted a price quotation—there was one from Allentown at Bedford Hills of $2.31. Then one at Katonah from Allentown on the same date, which is three miles or two and a half miles north of Bedford Mills, of $2.32. There is one from the same company on the same date, f. o. b. Golden Bridge, $2.33, on the same date. Now, I might state that all of those towns are exactly the same freight rate from Hudson and exactly the same freight rate from the Lehigh Valley.

Q. And do you know what the freight rate between those towns is?

A. For local shipment?

Q. Yes.

A. No, sir.

Q. You gave certain differences between those towns on the arbitrary basis.

A. Between those towns, on the f. o. b. price cost to me is different. The freight rate, however, is the same, namely 53 cents from Lehigh and 53 cents from Hudson.

Q. What is the maximum amount of difference
7956 between the delivered price at one of your yards and the delivered price at another, the maximum amount of difference?

Mr. Leisure: Delivered price from where, please.

By Mr. Wooden:

Q. From the Lehigh Valley or Hudson districts?

A. Well, all of the cement companies are the same, no matter whether it comes from Hudson or the Lehigh.

Q. Yes.

A. I cannot say what the price f. o. b. Richfield, Connecticut, is. The maximum difference between Bedford

Hills and Golden's Bridge is 2 cents a barrel. That is on the Harlem Division.

7957 Q. In Westchester County what is the maximum difference in the delivered price in this arbitrary zone?

A. The freight rate does change a little bit in there, but these prices are not present prices that I am quoting. This was made up some time ago. Mount Vernon—

Mr. Leisure: (Interrupting) May we have the date, please?

Examiner Norwood: Can you give us the approximate time, the date?

The Witness: I don't know whether I have that notation in here or not.

Mr. Leisure: I think it also ought to appear what the source of his information is as to these prices.

The Witness: Approximately September, 1937.

By Mr. Wooden:

Q. Are the figures and the information you are now giving based upon information that you accumulated during the course or ordinary conduct of your business?

A. No, sir. I have felt—

Mr. Leisure: (Interrupting) I object to what the witness felt. He can tell us where he got these figures, if he did get them. That is all we are interested in here.

The Witness: You mean the prices in Westches-
7958 ter County that existed at that time?

Mr. Wooden: That is what I want to know.

Examiner Norwood: Make factual answers to the questions.

The Witness: Sir, I have objected—

Mr. Leisure: (Interrupting) I submit the witness' objections are not material.

Examiner Norwood: Let the witness answer the question, and then we will see whether it is objectionable or not.

Mr. Leisure: That is what I am asking that he do.

The Witness: I have talked to various representatives about the injustice of these arbitrary price set-ups, and the cement manufacturers have in every case displayed a great desire to iron out all the things that were wrong with their set-up, but the men to whom I talked stated that they had very difficult problems, and I was asked—

Mr. Leisure: (Interrupting) May we know whom he talked to, before we have this on the record?

Mr. Wooden: Yes, let us have that.

The Witness: I can name you salesmen. Are you interested in the salesmen's names?

Examiner Norwood: Oh, yes, give us the names.

7961 By Mr. Wooden:

Q. Give the name of the party with whom you had any such conversation, and then describe what was said?

A. Well, I talked to Mr. Long of the Penn Dixie Cement Company.

Q. Is that Dan Long?

A. I believe he is the present New York Sales Manager. Anyway, he has been promoted a couple of times within the last few years.

Q. Yes?

7962 A. And I told him it was obviously unfair that a car of cement shipped from Hudson to Mount Vernon should come through Katonah. If you stop off at Katonah the cement company would realize an f.o.b. price of $2.27 and if it went on 35 miles further, to Mount Vernon they would realize $2.11.

Mr. Leisure: May we fix the date of that conversation?

By Mr. Wooden:

Q. Do that.

A. I cannot.

Q. Do the best you can. About when was it?

A. Oh, that was in the spring of 1937.

Q. What did Mr. Long say to you at that time?

A. He replied that the foreign cement was coming in to New York City at a very low price and that the domestic manufacturers had to somewhere near approach the price at which that was being sold to dealers along the Seaboard, that as a financial salvation it was necessary that the average price obtained throughout the country be higher than that price.

Examiner Norwood: Off the record.

(Discussion off the record.)

7963 By Mr. Wooden:

Q. I believe you were in the midst of describing what Dan Long said to you about this arbitrary price zone.

A. That it was necessary for the price to be adjusted between the Seaboard ports and the mill base price by stepping it up in a way that would hurt as little as possible.

Q. Will you explain as carefully as you can just how you were hurt?

A. I had to sell my cement for 16 cents a barrel more than it is sold for thirty miles south of me. Contractor customers move around freely in Westchester County, and when they come from the south and have a contract in the north end of the County, they naturally object to paying more than they are used to.

Q. In other words, that just leaves you out of the picture as far as the ability to compete is concerned?

A. On large jobs, yes.

Examiner Norwood: You mean it makes them go down to Brooklyn or where this lower arbitrary price prevails and get their cement, instead of buying it from you?

The Witness: In large jobs, it can be delivered cheaper on the job from the south end than it can right close to home. On small jobs that does not apply.

7964 Examiner Norwood: When they go down there, don't they get the imported cement?

The Witness: No, there has been some imported cement used around Westchester, but very little.

By Mr. Wooden:

Q. Does the trucking situation enter into that or the ability to truck cement?

A. Trucking cement? It is possible to truck cement from Tuckahoe to a job right close to my warehouse and deliver it on the job at a less cost than I can bring it in by rail to my warehouse and truck it on to the job.

Q. And is the freight rate to those two points the same or different from the producing mills?

A. Well, Tuckahoe, for instance, is 53 cents from Hudson, and my town is 53 cents from Hudson. From the Lehigh Valley district, however, it varies four cents a barrel, my town being higher.

Q. But the difference in saving on the trucking from that low priced point—to Tuckahoe, was it?

A. From Tuckahoe to my town, Katonah?

Q. Yes.

A. Well, I can give you my own figures here. It cost

me to truck one carload from Tuckahoe and unload it and put it in a pile a price of 23½ cents a barrel.

Q. You mean it cost you when you say "a price"?

7965 A. That is, the trucking. The trucking cost 23½ cents a barrel.

Examiner Norwood: Is Tuckahoe in the same state?

The Witness: Tuckahoe is in Westchester County just south of White Plains.

Examiner Norwood: The same as your town?

The Witness: Yes, in the same county.

By Mr. Wooden:

Q. What, if anything, did you do in the course of your business to meet that situation?

A. I asked more money for my cement.

Q. More than some of your competitors were willing to sell and deliver for?

A. Yes, sir.

Q. Did you endeavor to meet it in any other way?

A. Only by working on cement representatives whom I occasionally contacted to correct the situation.

Q. Did you ever do anything in the nature of attempted diversion of cars?

A. Yes, sir.

Q. Will you explain what you did?

A. I ordered a car of cement shipped in to Tuckahoe.

Q. From whom?

A. I used several companies. I ordered a car diverted and got away with it for a long time. Then I ordered

7966 a car shipped in to Tuckahoe and ordered it diverted, and I was told by telephone from—I believe I have the letter here from Mr. Hahn, the freight agent of the New York Central, that the bill of lading carried a notation that this cement is the property of the shipper and cannot be diverted without authorization of the shipper. I can read you that exactly if you require it.

Q. No.

A. And they could not divert the car. I therefore trucked the car—no, pardon me; I therefore ordered the cement reshipped at a cost of some $47 odd. I then put in my claim for a refund from the New York Central, claiming that they had no right to refuse diversion. The New York Central refused the claim and I then took that up with the Interstate Commerce Commission, offering

them evidence that in my opinion was conclusive, that the car belonged to me as soon as it reached the common carrier's tracks, and they told me, the Interstate Commerce Commission wrote me that they were not in a position to pass upon the ownership of the car, that if the cement manufacturer's bill of lading read that it was the property of the shipper, it was the property of the shipper as far as the railroad was concerned, and the railroad was correct in refusing to divert.

Q. And was that the end of your efforts to divert the car?

7967 A. I then took the thing up with the Federal Trade Commission.

Q. Pardon me.

A. I had reshipped this car. As soon as the car was reshipped, that was the end of my efforts to divert.

Q. You say you then took it up with the Federal Trade Commission?

A. I then took it up with the Federal Trade Commission.

Q. Was that the end of your efforts to divert cars?

A. No. I made one more attempt. It may not be an effort to divert; I ordered a car of cement from the Vulcanite Manufacturing Company in writing.

Mr. Hershberger: When, please?

The Witness: I can give you the date of my letter if you like.

Mr. Hershberger: Yes, I would like to know something about when these things happened.

The Witness: It will take me a few minutes to look through this.

By Mr. Wooden:

Q. Before you do that, I would like to get the date of this experience that you have just been describing.

A. I can give you that from my letters.

Examiner Norwood: You might explain to us just how much you could have saved by that diversion and

7968 how? That first diversion you mentioned?

The Witness: I could have saved a gross cost of 16 cents a barrel, against which would have to be put 4 cents a barrel for the differential of the additional freight charges, because the car was shipped from the Lehigh district, plus a cost of $6.30 diversion charges, plus 15 per cent emergency charge.

Q. Leaving a net saving of how much per barrel?

A. It would depend upon the size of the car. A two-hundred barrel car, for instance, the diversion charge would be 3 cents a barrel.

Q. On that particular car, what was the net saving?

A. I don't know; I can figure it, but I don't know. I don't even know the size of the car.

Q. There was some net saving?

A. There would have been some net saving; approximately 7 cents a barrel.

Q. Now, you were looking for the dates.

A. I put my claim in to the New York Central on March 31st.

Q. What year?

A. 1937; in the amount of $47.46. I seemed to have a freight bill here attached to it from the Penn-Dixie Cement Company, New York Central car No. 117,495, dated March 15th. Whether that is the same car or not, I don't know.

7969 The witness was shown papers marked Com. Ex. 1183 A-D, inclusive and said: This first one is a letter dated October 5, 1936, written to me by the Penn-Dixie Cement Company and signed by Dan Long. The next is an invoice from the Penn-Dixie Cement Company for a car shipped March 15, 1937.

Q. Is that the car that was involved in your efforts to divert?

A. It looks like it was. Shipped to Tuckahoe.

The letter is what he considers proof that the car belonged to the witness as soon as it reached the common carrier's tracks and not the cement company.

7970 He wrote the cement manufacturers and asked them what their terms of sale were. They replied with that letter.

Mr. Wooden: I offer those papers in evidence.

Mr. Leisure: Mr. Wooden, I notice there is a letter here dated August, 1936, and you are offering it at the same time you are offering the exhibits which are dated 1937. Are they connected?

Mr. Wooden: They are generally connected, but he said the letter did not relate to the car shipment which is covered by the invoice. I assumed they were when I had them numbered.

The Witness: You started to ask me about further efforts to divert, or something of that kind.

Mr. Wooden: Yes, but we will have to wait a minute for that.

Mr. Leisure: No objection.

(COM. EX. 1183-A, B, C and D was offered and received in evidence.)

Q. Referring to Commission's Exhibit 1183-A and B, the Penn-Dixie letter, will you state wherein you con-
7971 sider that as recognition that you were the owner of the car when delivered to the railroad company?

A. It says there:

"Therefore, in order for you to obtain the benefit of the cash discount reduction, payment of the invoice would have to be made before the expiration of the 15 days from date of shipment and, if in the meantime the car covered by the invoice had not arrived at the point of destination or we may say did not arrive until two or three weeks after the date of shipment, this would not change the discount terms of the invoice."

Q. In other words, they were figured on date of shipment rather than date of arrival of the car?

A. Right.

Q. Is Commission's Exhibit 1183-C a typical invoice that you get from the various cement companies, in that it shows the amount of freight and that that is deducted from the gross amount of the delivered price?

A. Why, broadly speaking, yes.

Q. Do you pay the freight to the common carrier?

A. We do.

Q. And remit the balance of the invoice to the cement company?

A. We do.

Q. Now, I asked you something about further
7972 efforts to divert, to meet this situation in this arbitrary price zone. Will you give us your further experience in that matter?

Mr. Leisure: Your Honor, we have spent a good deal of time on that. It does not seem to me that that is material to any of the issues in the case. I object to going into it further.

Examiner Norwood: Read the question.

(The question is read by the reporter.)

Examiner Norwood: I think he may do so, briefly.

Mr. Wooden: In this matter of diversion and rules against diversion, they have been in this case from the beginning. It was even in the Code and in the compen-

dium, about diverting where the effect is to reduce the delivered price below the regular price.

The Witness: On March 5th, 1937, we mailed a letter to the Vulcanite Cement Company and asked them to ship us a car of cement to Tuckahoe, accompanying it with a bill of lading, without the notation that "This is the property of the shipper." I got a telephone call that they could not ship under such circumstances. I have forgotten the agent's name. I believe the officers of the company were all out of town and this was the office manager, and he said "I will not take it upon myself to make the ship-
7973 ment." I then requested him to write me a letter to tell me that he would not ship it without that notation. He said, "I will not write you a letter." I said, "We will not take the car."

By Mr. Wooden:

Q. Who was that office manager?

A. I don't remember his name. He told me his name, but I don't remember it. I contacted the National Portland Cement Company, who I believe is not a member of the Institute. Their salesman called upon me. He had never sold me a car of cement. I told him that if he would ship me a car of cement with a bill of lading without that notation, I would see that he got a thousand barrels a year from us. He said he would take it up with his company. He telephoned me. By the way, I confirmed that order in writing to the National Cement. He telephoned me that they could not ship it without the notation. I asked him to write me a letter. I said, "If you will write me a letter, you can ship the car with the notation, but if you won't write me a letter, you cannot enter the order." The reply was, "We will not write the letter." Exactly the same thing happened with the Edison Portland Cement Company; and we didn't do any business with Edison.

Then I sent the order to the Penn-Dixie Cement Company, and I changed the order. I ordered a few
7974 barrels of white cement, a few barrels of dark cement, a few barrels of light cement and a few barrels of quick setting cement, all in one car, and I said I want a wire car number. I got a telephone call the next day, giving me the car number and telling me they had to put on that notation. I said, "Write me a letter telling me that you won't ship it without the notation." They said, "No, we cannot write you a letter to that effect." I then said, "I will not

take the car." But the reply came, "In line with our good service, the Penn-Dixie always renders, the car is on the road." I said, "It is not my car." He replied, "What will we do with the car with that mess of junk in?" I might change that language, "What will we do with a car with that kind of mixture in it?" I said, "That is your problem, not mine. Write me the letter and I will take the car." I got the letter, and that is all I asked for.

7975 Q. Did you get the car?

A. I got the car at Tuckahoe and I could not divert it.

Examiner Norwood: Is that letter in evidence that you are speaking of now?

By Mr. Wooden:

Q. Do you have it here?

A. I think it was sent to you.

Q. Is that letter the one that went in just a few minutes ago?

A. No, sir.

Q. Is Exhibit 1183-E the letter that you have just been referring to?

A. (Examining paper) Yes, sir.

Mr. Wooden: I will offer it in evidence.

Mr. Leisure: No objection.

(COM. EX. 1183-E was offered and received in evidence.)

Q. Mr. Dain, you described a conversation that you had with Mr. Long about this arbitrary price zone set-up and the effect it had on your business. Can you describe conversations that you had with any other cement manufacturers' representative about the same subject?

7976 A. Broadly speaking, it was the same conversation, with me doing most of the talking.

Q. Do you have in mind any particular conversation with any particular representative other than that with Mr. Long that you can describe?

A. Yes, I talked with Mr. McConnell of the Lone Star. I talked with Mr. Walter Glass of the Universal Atlas. I can give the names of various salesmen.

Q. Can you state in any more detail the substance or the conversation that you had with those gentlemen that you have just named?

Mr. Leisure: He did not have the conversation with them all at one time.

Examiner Norwood: No, but he will name which one when he gives that.

Mr. Leisure: The question does not call for that. It calls for a conclusion.

Mr. Wooden: I should have asked that.

Mr. Leisure: And when; when did that take place?

Examiner Norwood: Objection overruled.

The Witness: I am afraid the answer is no.

By Mr. Wooden:

Q. You merely state that in general the nature of the conversation was like the one that you had with Mr. Long?

A. Yes, sir.

7977 Mr. Leisure: I want to move to strike out that answer unless the witness can tell us something about whom he talked with and when it happened and what was said.

Examiner Norwood: I think he said he talked to all of them that he named, and the conversation was pretty much the same as one he had testified to specifically.

Mr. Leisure: I think it is very improper for the witness to give the substance of a conversation without any attempt being made to bring out to whom he talked and what the conversation was and the time it was had. Just asking him to summarize all of his testimony in a few choice questions, I think is improper.

Examiner Norwood: I think he may do that. It is sufficiently definite for you to investigate. Motion denied. The matter goes to its weight, the indefiniteness.

By Mr. Wooden:

Q. Mr. Dain, have you figured out what this situation that you have been describing has amounted to in the way of dollars and cents effect upon your business?

Mr. Leisure: Your Honor, I object to that. The witness' losses and his conclusion as to how he

7978 lost these amounts are both incompetent, immaterial and irrelevant to any of the issues in this case, and they are wholly speculative.

Examiner Norwood: The question necessarily involves a conclusion. Objection overruled.

The Witness: I can only reply that I have paid approximately for my cement $800 a year more—

Mr. Leisure: (Interrupting) Just one moment. Your Honor, can we not have it fixed at least as to whom he

purchased the cement from and what these losses consisted of? Just his conclusions in this way are incompetent.

Examiner Norwood: Those are particulars that may be added to this general information which he has a right to give and which the counsel has a right to elicit. Objection overruled.

The Witness: I paid approximately $800 a year more for my cement than I would have paid if I had purchased the same cement f.o.b. Tuckahoe. What my losses were, I cannot state.

Mr. Leisure: I want to move to strike the answer out, no proper foundation being laid for the question in any way, the question being entirely incompetent, immaterial and irrelevant.

Examiner Norwood: Motion denied.

7979 By Mr. Wooden:

Q. You say so much per year. For how many years?

A. Ever since this arbitrary price set-up has existed.

Q. How many years is that?

A. I don't know the exact date that it started. It was approximately in 1931.

Examiner Norwood: How long did it continue?

The Witness: It is now in existence.

Examiner Norwood: From 1931 to the present time.

By Mr. Wooden:

Q. Do you know whether or not other dealers in your vicinity are in this so-called arbitrary price zone?

A. Every dealer is in that price zone.

Q. In Westchester County, you mean?

A. Yes.

Q. Mr. Dain, do you know whether these announcements of price that were dated November 17th, Exhibit 1182-A to L involved an increase in price or not?

A. I don't know.

Q. Do you know whether or not there was a freight rate increase about that time?

A. November 17th, 1937?

Q. Yes.

A. There was a freight rate increase about that time, yes.

Q. Do you have here a map which you prepared

7980 showing the location of the various plants in Westchester County and the prices applicable at those plants?

A. Yes (producing).

Q. I should like to have that as an exhibit. Would you be content with a copy of it or have that returned after the copy is made of it?

A. It is really of no importance to me. The information there is some months old. As a matter of fact, the blue pencil price is what was existing at that time, and the lead pencil prices are those that I thought if they were made, might make it more equitable, but I finally gave it up as a bad job; I could not solve it.

Mr. Wooden: I ask to have the map marked Commission's Exhibit 1184 for identification.

(The document referred to was marked "Commission's exhibit 1184 for identification".)

By Mr. Wooden:

Q. Is the map that you have just described, the one that is now marked Commission's Exhibit No. 1184 for identification?

A. Yes, sir.

Q. Now, will you state just how you made up that map and what the figures on it represent, without going into what the figures are?

A. The map as made up is the map of Westches-
7981 ter County showing the various railroads and with the prices as of that time marked in blue pencil.

Q. What was the time you made the map up?

A. It was in 1937.

Q. Can you fix about the month?

A. Well, it was just before I had that car shipped. That was March 15, 1937, wasn't it? Probably in January, 1937.

Q. Now go ahead with your explanation.

A. This map shows the various towns in Westchester County. It has the price of cement in cloth which existed at that time at the various towns noted. It also has some pencil prices which were imaginings of my own.

Q. You refer to cement manufacturers' prices for rail delivery at those points?

A. Yes, sir.

Q. What about the pencilled prices?

A. The pencilled prices, I was trying to work out something that might solve my problem and the cement manufacturers' problem, but I did not get far.

Q. But the other prices were the prices of the manufacturer existing at that time at those points?

A. Yes, sir.

Mr. Wooden: I will offer that map in evidence, your Honor.

Mr. Leisure: Your Honor, it is practically ad-
7982 journment time, and if we could look over this during the noon period and check it, we may not have any objection to it. We have to do some telephoning to do it, however.

Examiner Norwood: You can retain it. He can go ahead with his examination.

Mr. Wooden: I am through, your Honor.

Examiner Norwood: Just retain that and go ahead with your cross examination. We will work ten minutes longer before adjournment.

Mr. Leisure: May I ask the witness a question about the exhibit?

Examiner Norwood: Certainly.

By Mr. Leisure: (Preliminary examination)

Q. The pencil marks are the ones that you described as trying to work out something?

A. Yes.

Q. The blue pencil or the blue ink, those are the actual prices that existed on those days?

A. That is true.

7983 Mr. Leisure: Mr. Wooden, are you offering the pencil marks at the head that are used as a caption? Are you offering that too, or are you offering it without the pencil memoranda?

Mr. Wooden: I would exclude those, but I will ask him a question about them first.

By Mr. Wooden:

Q. Can you state, Mr. Dain, from what is on the map, or any other source that you need to found your statement upon, what the mill base price at Northampton was at the time this map was prepared, also the price at the Hudson Valley, and the foreign cement price?

A. I requested the sales representative of the Lone

Star Cement Company to get that price for me, and this is what he gave me.

Q. State what it was.

A. Mill base $2.05 at Northampton, and $2.15 at Hudson.

Q. In cloth?

A. In cloth.

Q. What about the foreign cement?

A. Foreign cement running from $1.60 to $1.70, I guess that is.

Mr. Wooden: All right. Now, I will exclude that.

By Mr. Wooden:

7984 Q. Did you get that from the Lone Star too?

A. Yes, that was all given to me verbally by the Lone Star sales representative. I never could pronounce his name; it was some kind of a foreign name.

Mr. Wooden: All right; I will exclude any such notations on the exhibit that relate to such matter.

Mr. Wooden: I will exclude his proposed or suggested modifications of the existing situation. Those are in black lead pencil.

Mr. Hershberger: Do I understand that the offer is limited to merely showing what prices were in effect at the different points shown?

Mr. Wooden: In Westchester County.

Mr. Hershberger: I think we ought to have the dates, because the prices do change on a given day, and if there happened to be a different price the next day I think we should have the prices.

Examiner Norwood: The price may identify the date.

Mr. Hershberger: Yes, but there might be a price
7985 change in a month, and if the price changes on a certain day, we ought to change it.

Mr. Wooden: I will be glad to have it if we can get it.

Examiner Norwood: Off the record.

(Discussion off the record.)

Mr. Leisure: Your Honor, as to this long series of pencilled prices, would there be any objection to erasing those if they are not being offered in evidence?

The witness may want to keep them and we can make him a memorandum of those if he wants them; but if they are not being offered, I think it would be better if they were erased.

Examiner Norwood: They may be deleted later.

Mr. Leisure: Do you want to keep them, Mr. Witness? Do you want us to make you a memorandum of them?

The Witness: They are of no value at all.

Mr. Leisure: May I ask the witness another question about this exhibit?

Examiner Norwood: Certainly.

Mr. Leisure: This exhibit does not purport to cover all the prices? It is just the prices of certain places that you have designated?

The Witness: That is correct.

Mr. Leisure: It does not purport to cover all the 7986 prices in Westchester County?

The Witness: It only purports to cover what is there, and as far as I know that is every price in Westchester County, but I do not know that there are not others.

Mr. Leisure: These are only prices, Mr. Dain, that are on railroad lines, aren't they?

The Witness: Yes, that is all the prices there. Railroad and water is just the same in Westchester County.

Mr. Leisure: But at designated stations, you have here?

The Witness: At designated stations. That is f.o.b. cars, those stations.

Mr. Leisure: Would a place like Armonk Village, for example, be shown on your map?

The Witness: No, I don't think so. That has no railroad.

Mr. Leisure: And there are other places of that kind that do not appear on your map, are there not?

The Witness: There are other places of that kind. Bedford Village is one.

By Mr. Wooden:

Q. Did I understand you to say, Mr. Dain, that prices in Westchester County are the same for water deliv-
7987 ery or rail?

A. Yes.

Q. At those water delivery points that you named a minute ago?

A. Those along the Hudson River are water delivery points. At Yonkers and Peekskill, the price f.o.b. cars is exactly as the price f.o.b. dock. I don't know whether the water price is f.a.s. or f.o.b. dock.

Mr. Leisure: And that is why you have not got prices at Irvington, for instance, and Dobbs Ferry? Those places, I notice, you have not written in prices there.

The Witness: I don't know.

Mr. Leisure: I beg your pardon?

The Witness: I cannot tell you that. That was made out some months ago.

Mr. Hershberger: Did you make this up yourself?

The Witness: No, I did not.

Mr. Hershberger: Who made it up?

The Witness: Mr. McConnell, of the Lone Star Cement Company.

Mr. Hershberger: He made this map?

The Witness: Yes.

7989 Mr. MacIntyre: If your Honor please, we would like to inquire of counsel for the respondents, whether before they start their cross examination of the present witness, we may withdraw him temporarily for asking one other witness one question?

Mr. Leisure: No objection.

JOSEPH J. RYAN, previously duly sworn, resumed the stand and testified further as follows:

Direct Examination by Mr. MacIntyre.

Q. Mr. Ryan, you recall that in your testimony of June 3rd and June 7th, last week and this week, you mentioned the conversations that you had had with a number of representatives of cement manufacturers, that is, salesmen, concerning the statement that they had made to you as to why they would not sell you domestic cement?

A. Yes, I do.

Q. Do you recall that testimony?

A. I do.

Q. Now, will you please state whether or not if
7990 you can recall, whether Mr. W. O. Fredenburg, District Sales Manager of the Allentown Portland Cement Company, also called on you in that connection?

A. He did.

7991 Q. Will you please set as closely as you can the date, and the nature of the conversation you had with him on that matter?

7993 (The question is read by the reporter to the witness.)

By Mr. MacIntyre:

Q. That is, the conversation you had with Mr. W. O. Fredenburg, the District Sales Manager of the Allentown Company.

7994 The Witness: During the early part of the year 1934, Mr. Fredenburg called at my office and I had a conversation with him along the lines that he regretted that it was still so that he could not furnish us domestic cement.

Q. Did he say why?

A. That he had received a message himself, that is, at his New York office, that the Cement Institute had given instructions to the Allentown office that the Allentown Portland Cement Company was not to furnish or supply any dealer in his area with domestic Portland cement that was handling the foreign.

Mr. MacIntyre: That is all.

Cross-Examination by Mr. Leisure.

Q. Mr. Ryan, when did you say this conversation took place?

A. In the early part of 1934.

Q. Did you make any pencil memorandum of the conversation at the time?

A. I had not, because he was the only one that made such a statement that his office had received instructions from the Institute.

Q. And did he tell you how these instructions were received from the Institute?

7995 A. No, that was just his conversation that he had received this message personally himself from his Allentown office that they had received instructions at the Allentown office from the Cement Institute.

Q. Did you find out from him how these instructions came from the Institute, what form they took?

A. No, he did not say whether he had it in writing, but that was his instruction that had been given his Allentown office and he had been informed here in the New York office.

Q. Did he call on you that day to sell you cement? Is that how the conversation came about?

A. He did. He had been calling on us for a period of about thirty years, and he said that he was passing by and he wanted to say "Hello", and to keep contact with us and to tell us that the same procedure was in effect, that he could not take an order.

Q. And you remember quite definitely today that he told you that the instructions came from the Institute? You could not be mistaken about that?

A. I recall that very well because that was the only one that had made such a statement.

Q. What else did he say to you on that day?

A. Nothing further than that. He said, "If anything happens, I will come in and let you know."

Q. What did you say to him on that day?

7996 A. I told him that I regretted he could not carry on and give him any business, that we would like to do it.

Q. That was the total conversation? He just said that he had instructions from the Institute that he could not do this, that they were not allowed to do business, and that was the total conversation?

A. Yes, he came in to make that report because I asked him that I would like to know at any time that he would be able to go back and carry on business with them, and he called in there two or three different times.

Q. You understood from that call that he wanted you to know that the Institute had issued such instructions?

A. Yes, he repeated to me I guess two or three times after that, that he called.

Q. And you understood that was the purpose of his call, to let you know that the Institute had issued such instructions?

A. Well, he was giving me the message of just the reason he could not furnish cement, and that in detail was just how he gave it to me.

Q. And you understood that to be the purpose of his call, to tell you that?

A. I presume it was, yes, to let me know. I wanted to give him my impression that I did not want him to feel that we were holding any animosity against him.

7997 Q. He wanted you to know that he was compelled to do it by the Institute?

A. That is, that his Allentown office had received such instructions.

Q. And he told you, did he, that he wanted you to know that the Institute was compelling him to do it?

A. He told me the reason, and as he brought it out, that was the reason that he could not do it.

Q. Did he mention anything to you about the N.R.A. code, at that time?

A. No.

Q. The code was not mentioned?

A. Not at that time; I had no conversation with him about the code.

Mr. Leisure: Your Honor, I want to move to strike out all of that testimony as being rank hearsay, that the Institute tells the Allentown office and the Allentown office tells the salesman and the salesman tells this witness what happened. I want to move to strike out that testimony on the ground that it is hearsay.

Examiner Norwood: Motion denied.

7998 FRANK M. DAIN, the witness for the Commission, resume the stand and testified further as follows:

7999 *Cross-Examination by Mr. Leisure.*

Q. Mr. Dain, on this map, were you having any discussions with Mr. McConnell at the time this map was drawn and submitted to you?

A. Not at the time, no.

Q. What happened, which caused him to give you a map, do you recall?

A. Yes. Mr. McConnell called upon me and I took up the question with him, as I did with every cement man I ever talked with, and substantially the same conversation took place as I gave this morning with Dan Long. Not with Dan Long; I have forgotten now who it was. You asked me some question. And I told him that I felt that the present system could be changed slightly to work a lesser hardship upon dealers.

Q. And didn't Mr. McConnell tell you to take
8000 this and work on it yourself and, if you could find any practice that would be more equitable to the dealers in your territory, he would be glad to adopt that?

A. Substantially, yes.

Q. Is that a fair statement?

A. It was about two or three weeks later that the Lone

Star Cement Sales representatives walked into the office with that, and stated that Mr. McConnell had set it up and wished me to see what I could work out, which I did.

Q. And as a result of that you made the figures shown here in pencil?

A. Yes. And wrote him that I could not do anything about it.

Mr. Wooden: I want to amend my offer to include the pencil notations which he says he made on there, as a result of Mr. McConnell's request.

Mr. Leisure: It is not quite fair to say "at Mr. McConnell's request."

Mr. Wooden: Or suggestion.

Examiner Norwood: By the reason that the witness is on the witness stand, he can give us any information that the pencil notations contain. It seems to me to be the short way, but they have objected to that, so I won't take it over objection.

By Mr. Leisure:

8001 Q. At any rate, whether they are in or out, Mr. Dain, you came to the conclusion that these pencil notations would not help you a great deal, would not represent any great improvement?

A. I wrote Mr. McConnell that I realized that the weight of the problem and that I could not see any solution that would solve the manufacturers' problem and would solve the retailers' problem; but because I could not find the equitable solution did not mean that I could condone the shifting of the burden from the manufacturers' shoulders to the retailers' shoulders.

Q. And you wrote him to that effect?

A. I wrote him to that effect.

Q. You testified this morning, Mr. Dain, that the trucking rate, I think, from Tuckahoe to Katonah was 23 cents. Do you recall that?

A. No, I didn't testify that that was the trucking rate. I testified that that was my cost on one particular car, with my own trucks.

Q. Is a cent a mile a fair rate?

A. It may vary. It will cost you ten cents for the first mile.

Q. Would that be a fair rate, then—it is thirty miles from Katonah to Tuckahoe; is that correct?

A. I would say that is correct.

8002 Q. Then would that be a fair estimate?
A. I do not think it would.
Q. What would?
A. It is more than a cent a mile for the first few miles, then you reach a point where it is a cent a mile, and then you get to a point where it is less than a cent a mile, because the loading is just the same whether it is one foot or one hundred miles.
Q. I made a note of twenty-three cents this morning. Isn't that what you said?
A. 23.5.
Q. That is right?
A. That is on that particular car.
8003 Q. Did you have it on any other cars other than that, the rate between those two points?
A. I did not keep it in as much detail as I did this one. It was approximately the same.
Q. What was the price in Katonah?
A. At that time? Let me get that invoice here.
Q. I am referring to the $2.27 you referred to this morning.
A. $2.27? I don't remember that.
Q. That is on the map in blue pencil.
A. What does that refer to?
Q. It is in blue pencil or blue ink.
A. That is the price in cloth?
Q. In cloth at Katonah.
A. Yes.
Q. What was your markup there?
A. We had gotten approximately 70 cents a bag for cement for some years past. That is $2.80 a barrel.
Q. That is, you buy at $2.27 and sell at approximately $2.80, is that correct?
A. No, because we buy in paper and that would be 20 cents less. $2.02 in paper and $2.27 in cloth. We buy in paper.
Q. And there is a markup of approximately how much?
A. $2.02 to $2.80? 78 cents.
8004 Q. That is your markup in Katonah?
Examiner Norwood: Per barrel?
The Witness: That would be per barrel, yes.

By Mr. Leisure:
Q. What was the Tuckahoe price?
A. Sixteen cents less per barrel.

Q. So the price in Tuckahoe as given here on the map is $2.11?

A. I guess that is correct, yes.

Q. That is what the dealer would pay the manufacturer in Tuckahoe?

A. Yes.

Q. Do you know the market price at which the dealers were selling cement in Tuckahoe at that time?

A. Only from hearsay.

Q. What was it?

A. I would say sixty cents a bag which would be $2.40 per barrel.

Q. Then the Tuckahoe dealers were asking a markup of approximately sixty cents, is that correct?

A. That is probably correct.

Q. And your markup you have already said was 78 cents?

A. That is right.

Mr. Wooden: Is that in cloth or paper or how?

The Witness: Paper. Have you got the Tuckahoe 8005 right on the paper? $1.86 would be the Tuckahoe price in paper and $2.40 would be the selling price and that would be 56 cents a barrel would be the Tuckahoe markup.

Q. 56 cents instead of 60 cents in Tuckahoe?

A. Yes.

Mr. Wooden: How about the $2.02 and $2.40? Were they comparible?

Mr. Leisure: One at a time, please.

The Witness: $2.02 is my cost at Katonah in paper. The $2.40 is what I have heard was the selling price in Tuckahoe by a Tuckahoe dealer who paid $1.86.

By Mr. Leisure:

Q. So from these figures that you have given me, Mr. Dain, if a Tuckahoe dealer sells in Katonah it is only because he is willing to sell at a less markup, isn't that so?

A. And with a 16 cent less cost.

Q. Your markup, though, is 22 cents higher than his markup?

A. I would imagine so.

Q. You could get a car and send it to Tuckahoe, could you not, and pick it up there with your own truck?

A. Yes, sir.

8006 Q. So then you would be on the same basis as the other Tuckahoe dealers, would you not?

A. No.

Q. Why not?

A. Well, because of two reasons. One is that the cement has to be stored in the warehouse. We deliver it in small lots. I have no warehouse in Tuckahoe and the Tuckahoe dealer presumably has. And the other is the fact that I can truck from here across the room cheaper than I can truck from across the room over here, because I can watch my men work if they are working here.

Q. In Katonah you mean instead of Tuckahoe?

A. Yes, sir. I can truck cheaper from Katonah to Tuckahoe than I can from Tuckahoe to Katonah, and the same thing applies to the dealer in Tuckahoe. He can truck cheaper from Tuckahoe to Katonah than he can from Katonah to Tuckahoe.

Q. Because why?

A. Because he can watch his men.

Examiner Norwood: They will load faster, will they?

The Witness: Yes.

By Mr. Leisure:

Q. Do you have a warehouse in Katonah?

A. Yes, sir.

Q. So you would have an advantage over him if he attempted to truck from Tuckahoe to Katonah?

8007 A. No.

Q. Would he have a warehouse in Katonah?

A. No, sir. I can explain that.

Q. Will you please?

A. Yes, sir. If a man wants five bags of cement and there is no particular rush about delivery, it comes out of my warehouse, and he expects it to come out of my warehouse if he lives in Katonah. We have a warehouse charge and we pay 16 cents a barrel more for cement than a Tuckahoe dealer who would deliver it up from Tuckahoe direct to the job. I can put it this way. I figure my cost on a carload of cement from Tuckahoe to Katonah in pile at 23½ cents; that is, 8½ cents more than the cost differential f.o.b. cars, but it costs me 11 to 12 cents to truck from the car in Katonah one hundred yards away simply for the reason that the loading and unloading charge is the same in both cases. That was a point that was brought

out that it is not a cent a mile, it is much more than a cent a mile for the first ten miles, and much less than a cent a mile over thirty miles.

Q. Now, as I understand you then, your complaint is that the Tuckahoe dealer can buy cement cheaper than you can?

A. Yes, sir.

Q. Because if he sells in your territory he must sell at a less markup than you sell for?

8008 A. What is that?

Q. He cannot sell in your territory for the mark-up that you make on your goods, can he?

A. Why?

Q. From the figures that you have given us?

A. I only take small business. The Tuckahoe dealer is in a congested area; he takes larger business. There has never been an apartment built in any one of my three towns, a brick apartment. There is not one there, but there is large orders in Tuckahoe. In other words, a one-hundred bag order of cement is quite an event in my life.

Q. I beg your pardon?

A. A one-hundred bag order for cement is quite an event in my life, but it is not for a Tuckahoe dealer.

Q. What is your total for a year?

A. 5000 barrels a year for the three yards; approximately 5000 barrels.

Q. So your complaint is really against the Tuckahoe dealer then?

A. Not against the Tuckahoe dealer. I am using Tuckahoe as a symbol. My complaint is the fact that anybody south of me can buy cement for less than I can buy it for.

Q. Your complaint is not to the Tuckahoe price in Tuckahoe?

A. No.

Q. You want the Tuckahoe price in Katonah?

8009 A. I want it either place. I want to buy as low as anybody that pays their bills as I do.

Q. You can buy as low as anybody in Katonah, can't you?

A. In Katonah, yes.

Q. And you can in Tuckahoe?

A. Right, but not f.o.b. mill.

Q. How did you figure then this loss of $800 per year?

A. I did not say there was a loss of $800 a year.

Q. I must have misunderstood you.

A. I said I paid approximately $800 a year more for my cement than I would have paid if I had had it delivered to Tuckahoe.

Q. Then I misunderstood you, because I thought Mr. Wooden asked you how much your loss was per year.

A. He did and I said I could not tell him.

Q. And I made a note that it was $800 a year. Then you do not want the record to stand and his Honor to understand that with the markup that you have, that you have a loss of $800 per year because of this situation?

A. I have no idea what my loss is. I don't know how much business I have had to pass up because of the differential in the price. I cannot tell you.

Q. I am not asking you to speculate about what great men we might all be if circumstances would allow, but I am asking you to tell me how you arrived at the $800
8010 figure which you gave us. It was not explained, and I would like for it to be clear on the record.

A. I did not say it was a loss; I said I paid that much more money for the cement.

Q. Than you would have paid for it?

A. If I had had the same price as Tuckahoe.

Q. Thank you for straightening that out. Or if you had bought all of your cement delivered in Tuckahoe?

A. Yes, sir.

8011 By Mr. Leisure:

Q. Now, as to these price changes that you testified to this morning, it was the practice in your experience within the last two years—you correct me if I misquote your statement—when price changes were made by the manufacturer for the same one not to institute a new price successively?

A. If I understand that, it is correct.

Q. Now, how many price changes have there been within the last two years?

A. Well, a number of them, I think.

Q. How many dealers approximately are there that ship into the territory of Westchester—how many manufacturers, I mean?

A. I have no idea.

Q. Would you say that twenty was a reasonable estimate, of what you know of this situation?

A. I would say plumb twenty.

Q. How many changes within those two years would you say that there have been?

A. Offhand, I would say four.

Q. Will you give them to us, please?

A. Yes. It went up four cents a barrel with the freight change.

Q. When was that?

A. The last freight change, which was ap-
8012 proximately December of last year.

Q. December, 1937, a freight change of four cents; is that right?

A. That is correct

Q. What are the other three changes?

A. A price drop of approximately thirty cents a barrel.

Q. When was that?

A. Oh, that was a year ago, about.

Q. Can you give me, approximately the month?

A. I cannot. That was made, was instituted, I guess, by Lehigh. There was—

Q. (Interrupting) Can you give me any idea of the month on that?

A. No, I cant. Approximately a year ago. It might be eighteen months, for all I can say now.

Q. Yes? That is two changes?

A. I guess maybe the other two are more than two years ago.

Q. I thought so. Now, there was one change, was there not, in December of 1935—that was $2.08, do you recall that?

A. That sounds like the 15% emergency, when that came on, or was removed. About 1935 the 15% emergeney was put into effect.

Q. In December of 1935 the rate was $2.08. Do
8013 you recall that?

A. I do not. I do remember the fifteen per cent emergency.

Q. You said that there was another one last year, that dropped down, and you mentioned Lehigh. Did you have reference to the change in December of 1936, when the price went to $1.75? Is that the one you had reference to?

A. That is the f. o. b. Brooklyn price, you mean?

Q. Yes?

A. No, sir; that did not affect the price at Katonah. The price at Katonah was still the same as it had been.

Q. The $1.75 is not the Brooklyn price. I am talking about the one Lehigh instituted in December of 1936, which did affect Katonah.

A. There has not been a $1.75 price in Katonah for a long time.

Q. You have given me now two price changes in the last two years.

A. Yes.

Q. Can you give me any more in the last two years?

A. I can give you two more, but they were probably more than two years ago.

Q. So that this practice that you testified about in the last two years, based on twenty companies doing business, is based on two changes?

A. No, indeed.

8014 Q. Give me any other changes that took place in those two years?

A. There were no other changes, but we had the price confirmed very frequently. I would reckon that every three months, for just random selected times, we would get a quotation from various companies, stating that the price is a certain amount, just the same amount as has been in effect before. It is more or less a confirmation.

Q. On these letters I notice, that were offered in evidence, rather the notices that are dated November 17th, 1937, which you produced, you have in writing on the face of these documents, "Received at 9:30 a. m. mail," "Received 9:30 a. m., mail." Why were you writing the mail receipt on those?

A. Well, because I get the mail. We don't have mail delivery in Katonah. We have to go to the post office and get it.

Q. But what was the purpose of keeping the exact time on these documents?

A. I thought it might be of some value.

Q. What value?

A. I had no idea.

Q. Did you think they might be of some evidence against the manufacturers who sent them to you?

8015 A. If there was any evidence against the manufacturers in them of this arbirtary price set-up, I certainly wanted it presented.

Q. And is that why you wrote it on there?

A. Yes, sir.

Q. What did you do with it when you got it?

A. Mailed it to the Federal Trade Commission.

Q. Did you know at the time you mailed them to the Federal Trade Commission that those changed prices were all based on a changed freight rate of four cents?

A. I cannot say in regard to that. I was not particularly interested in that.

Q. And if it was based on a changed freight rate of four cents, would you be surprised to get these changes all on the same date, approximately, from the companies that you had done business with?

A. Well, yes; I have never found cement manufacturers were ever interested in what the freight rate was.

Q. Don't the manufacturers with whom you do business ordinarily send you notice of changes in prices?

A. Yes, but they don't follow out the freight rate changes.

Q. They don't?

A. No, sir.

8016 Q. Now, you received notices from "Alpha Portland Cement Company, Universal Atlas Cement Company, Allentown Portland Cement Company, Hercules Cement Corporation, Vulcanite Portland Cement Corporation, Nazareth Cement Company, Keystone, Lehigh, Lone Star and Edison. Those were all companies with which you had done business in the past, weren't they?

A. No, sir.

Q. They were companies which had solicited you in one way or another?

A. No, sir.

Q. They were companies that were doing business in your territory?

A. I have no way of knowing.

Q. How many of those had you done business with in the past?

A. May I look them over?

Q. Yes.

(Papers are handed to the witness.)

A. (Witness examines the papers) Four of them.

Q. What four were they, please?

A. Alpha, Universal, Atlas, Allentown, Vulcanite.

Q. You testified this morning, when Mr. Wooden was examining you as to a conversation you had with Mr. Long in 1937. Do you recall that testimony?

A. No further detail than I gave this morning.
8017 I believe Mr. Wooden asked me that question, if I could add anything to it.

Q. If Mr. Long died on November 4th, 1936, you must be mistaken about having had that conversation with Mr. Long in 1937?

A. That certainly would have been an error. I didn't know he was dead until I heard you say it this morning.

8031 *Redirect Examination by Mr. Wooden.*

8032 Q. Have you ever been able to buy cement except at delivered prices?

A. No, sir, I have never tried.

Q. Why didn't you try?

A. The only other way to buy it is f. o. b. mill.

Q. You say you have not tried that?

A. I never tried to.

8033 Q. I say, why haven't you?

A. I have little interest in it because I disapprove of it.

Q. Would the trucking which you referred to as not being favored by you tend to create competition in the price between dealers, the dealers who truck and those who did not truck?

A. Will you read that question?

(The question was repeated.)

The Witness: Yes.

Examiner Norwood: It would tend to create inequality in prices?

The Witness: Correct. If I could amplify that? A retailer has a certain interest in available business in his territory. I, at Katonah, am very much interested in the business around Katonah. I have not got any interest in the business around Poughkeepsie, but if I could truck and a customer came in who I knew discounted his bills, I would just simply hire a truck at Hudson, take a half cent a barrel gross margin of profit, which would be about one-tenth of one per cent, and base my selling price on that.

By Mr. Wooden:

Q. You think then that trucking from the mills would tend to create that result?

A. It would tend to wipe out the retail business in cement.

8042 THOMAS J. HARTE, the witness for the Commission being recalled, testified further as follows:

Direct Examination (Continued) by Mr. Wooden.

Q. Mr. Harte, can you say whether or not your company put out announcements on November 17th, 1937, giving notice of the increase in price resulting from the emergency freight increase?

A. I believe we did, Mr. Wooden, but as I recall it, it was somewhere around the 20th, possibly, or the 21st.

8043 Q. Before you put yours out?

A. Yes, sir.

Q. Can you produce a copy of the announcement that you put out?

A. I shall try to.

Q. If those freight increases actually became effective on November 15th, there was a period of time when you were absorbing those freight increases in your price, were you not?

A. That is correct, and we are still absorbing them, because we had previous contracts at the lower price, before the freight rate increase became effective.

Q. But even on business where you did not have contracts, there was a period of time when you were absorbing the freight increase?

A. That is correct, yes, sir.

Q. Will you identify the paper marked "Commission's Exhibit 314-W for identification" as a photographic copy of an interoffice communication from the files of your organization? (Exhibiting paper to witness).

A. Yes, sir.

Mr. Wooden: I offer it in evidence.

Mr. Leisure: May I ask Mr. Harte a question, please?

Examiner Norwood: Certainly.

8044 Mr. Leisure: Mr. Harte, in whose handwriting is this exhibit?

The Witness: I believe that is the sales representative in our Washington territory. It is the salesman's report where he attended a public letting and those bids are all read out. It is public information.

Mr. Leisure: And was this a report after he attended the public letting, that he made to you?

The Witness: That is correct.

Mr. Leisure: We have no objection.

(COM. EX. 314-W was offered and received in evidence.)

8045 By Mr. Wooden:

Q. Can you tell me, Mr. Harte, how your bids to the Panama Canal zone or authority were made up?

A. I have lost the date on that, Mr. Wooden.

Q. You don't make it up on the basis of what the cement costs or what your mill price or mill net is plus the cost of the transportation?

A. No, sir.

8046 Q. You merely make it up, wholly on the basis of what you found the last bids were?

A. That is absolutely correct.

Q. I show you a paper marked Exhibit 314-Q for identification. Will you identify that as an inter-office communication from the files of your organization?

A. (Examining paper) Yes, it is similar to the previous bid here. It is a report of a public letting.

Mr. Leake: What is the date, please?

The Witness: The das is 4/21/36.

By Mr. Wooden:

Q. That is for delivery at various points in North and South Carolina and Alabama, is it not?

A. That is correct.

Mr. Wooden: I will offer it in evidence.

Mr. Leisure: Is this another report of one of your salesmen of a public letting?

The Witness: Yes, sir.

Mr. Leisure: And after the letting, he made this report?

The Witness: That is correct. After the bids were read publicly.

Mr. Leisure: No objection.

Mr. Leake: No objection.

8047 (COM. EX. 314-Q was offered and received in evidence.)

By Mr. Wooden:

Q. In making up your bids for such lettings as represented by those last bids to the Department of Agriculture for delivery in those various states I named, do you also as-

sume there that the last prices bid at those points are the ones that will probably continue to be made?

A. No, not on that particular type of bid. It may be in an arbitrary zone.

Q. How do you determine what your prices are to be delivered in an arbitrary zone?

A. It may be the last price that we found at a particular destination.

Q. Then you assume that the last price that you found at a particular destination is the most likely one to be found in the next bid?

A. Yes, sir.

Q. Will you identify the papers marked Exhibits 318-C and 318-D for identification as photostatic copies of inter-office communications from the files of your organization?

A. (Examining papers) It looks like our stationery.

Q. Do you recognize the parties to whom and by whom the papers purport to have been prepared?

8048 A. Yes, they are in our employ.

Q. Did you handle the supplying of copies of papers to Mr. Travis Brown of the Commission's staff?

A. Yes, he was one of the Commission's men that called on us.

Mr. Wooden: I offer those in evidence.

Mr. Leisure: May I ask the witness a question?

Examiner Norwood: Certainly.

By Mr. Leisure: (Preliminary Examination)

Q. You told Mr. Wooden that certain files were turned over to Mr. Brown. What was the procedure when Mr. Brown visited your office; did you sort out specific papers and give them to him, or how was it?

A. As I recall it, Mr. Leisure, he asked for certain papers and we produced certain files and let him pick out what he wanted out of them.

Q. And as far as these documents were concerned, did you have anything to do with them at the time they were written?

A. No, I did not.

Q. Just tell us if you have ever seen them or are familiar with them or can vouch for their correctness in any way.

A. Well, I have never seen them, and the only thing

that may make a misstatement out of it for me, there
8049 was a copy sent here to me, but I certainly don't recall all of the copies that come to my desk.

Q. You do not see everything that comes to your desk, do you?

A. No, sir.

By Mr. Wooden:

Q. Don't you recognize them as papers that you supplied to Mr. Brown?

A. Well, I will make the same statement that I did the other day,—if Mr. Brown said he got them from us, I don't deny it. I don't remember those particular papers, Mr. Wooden, but if Mr. Brown stated that he got them from our company, I am willing to admit that he got them.

Mr. Wooden: That is the record, your Honor. Mr. Brown identified them in that way.

Mr. Leisure: No objection.

(COM. EX. 318-C and D was offered and received in evidence.)

Q. Mr. Harte, I note here that in Exhibit 318-C the various mill nets of particular quotations is set forth, the first one is $1.53 net f.o.b. cars Navy Yard, Philadel-
phia, that is before cash discount, and your net on
8050 delivery to a point near Norfolk, Virginia, was $1.09 before cash discount deduction. That is the difference of 44 cents between those two. Do you have similar differences in the nets that you obtain from commercial customers?

A. Yes.

Q. You have some even larger than 44 cents?

A. Well, we had a recent one in Brooklyn of 75 cents about.

Q. That is in the foreign cement arbitrary zone?

A. That is right.

Q. How high does it run in the commercial zone where the regular delivered price is in effect?

A. There are quite a few points. Norfolk, I think, is the best example.

Q. You mean that is your lowest mill net?

A. I think that is our lowest mill net out of the Security plant. I may add to that that occasionally if we receive an order from a governmental agency in South Carolina of course it may run just about that same price.

Q. Not any lower than that?

A. No, I would not assume any lower than that.

Q. Do you have commercial customers in the vicinity of Norfolk where your mill net runs that low?

A. We don't have any there. We have tried hard to obtain business there from time to time, but we have
8051 not been successful in obtaining an account.

Q. Trying to obtain business in that locality where your net would be as low as that if you obtained the business?

A. Of course, that depends again on market conditions. If there is no consumption in Baltimore or Winston-Salem and there is consumption in Norfolk, we would have to go to the market; we cannot bring the market to us.

Q. But you have been soliciting business where your net was that low?

A. In some cases. Not regularly day in and day out.

Q. Do you have a minimum mill net below which you will not go?

A. No, sir. I think I answered that the other day.

Q. Will you identify the paper marked Exhibit 316-A as a photostatic copy of an inter-office communication from the files of your organization?

A. (Examining paper) Yes, this looks like some of our stationery, and I recognize the names mentioned there. I don't say that I have ever seen the paper before.

Mr. Wooden: I will offer it in evidence.

The Witness: I would not even agree, Mr. Wooden, while my name is mentioned in there, that I made the statement. We have some assistants who have the authority to mention my name in a case such as that that they have talked to me and I suggested.

8052 Mr. Leisure: I think it would help the record, Mr. Wooden, that when you offer these you indicate the type of office communication. This is a report from Long to Bronson, dated August 22, 1935. Then a little later, when we look into the record, we can check into it.

Mr. Wooden: All right.

(COM. EX. 316-A was offered and received in evidence.)

Q. Mr. Harte, referring to this Exhibit 316-A, did you at that time have a minimum net of $1.30 in effect before cash discount, or was it $1.40?

A. As far as I stated before, Mr. Wooden, we do not have any definite line that we take. This may have been an individual case come up on a Friday and we decided on the Friday that we would not go below $1.30 or $1.40, but

we have no standard set from day to day. It all depends upon where the business is, what net we take.

Q. This was on trade orders in general, wasn't it?

A. If there was no big business there would be no big trade orders.

Q. Do you aim to keep your mill net above your cost?

A. I think anybody would answer yes to that.

8053 Q. I meant in the individual cases?

A. In all cases. We always try to make money.

Q. Will you identify a paper marked 316-B as an inter-office communication? (Exhibiting paper to witness) Addressed to you by your Mr. Parks at Albany, January 2, 1936?

A. I will. And I am very glad to have it in there, because it shows what profit we can make when we get $0.90 per barrel for cement.

Q. This was in the Brooklyn arbitrary zone?

A. That is correct.

Mr. Wooden: I offer it in evidence.

Examiner Norwood: Off the record.

(Discussion off the record.)

Mr. Leisure: I do not know whether the word here is "last" or "lost." I wonder whether the witness can help us.

(The witness examines the paper.)

The Witness: "Lost cement." That is a shipment due to breakage.

Mr. Leisure: It is "lost" and not "last?"

The Witness: That is right: "Lost".

Mr. Leisure: No objection.

(COM. EX. 316-B was offered and received in evidence.)

8054 Q. I now show you papers marked 316-C, D, E, F and G. Will you identify them as photographic copies from the files of your organization; the first being a letter from V. J. Lawler to W. E. Hannan, Jr. dated November 9th, 1936—that is 316-C; and this one, 316-D from R. V. Cearfoss to yourself, dated April 15th, 1936; 316-E, a tabulation of shipments into North Carolina, the first nine months of 1936; and communications from your Mr. Lawler to Mr. Hannan, with a copy to T. J. H., dated October 22, 1936.

A. I don't know about these, Mr. Wooden, they are just plain pieces of paper with a lot of figures.

Q. 316-E and F?

A. Yes. 316-G and 316C and 316-D appear to be our papers.

Q. But you are not sure about 316-E and F?

A. No, except that I notice Mr. Brown's signature on there, I think, or writing. If he states that he got them from our files, I will agree with him.

Mr. Wooden: I will offer the whole, your Honor, on the strength of the witness's identification plus that of Mr. Brown.

Mr. Leisure: It seems to me there should be some statement as to why they are material to the issue in some way.

I do not know what they are, if the witness does not
8055 know, and I do not know whether Mr. Wooden knows or not.

Examiner Norwood: What is the purpose of them?

Mr. Wooden: These two sheets here are a tabulation showing shipments into North Carolina the first five months of 1936, showing the actual nets, the prospective nets, the value of the old net and the value of the prospective net at each of a number of towns in that State, and then some summation figures on average nets.

Examiner Norwood: That is, the figures of this mill?

Mr. Wooden: They are from the files of this company.

Examiner Norwood: The North American.

Mr. Wooden: I would like to have the witness testify further about these figures, if he can.

Examiner Norwood: Yes. Show them to him.

By Mr. Wooden:

Q. The shipments into North Carolina that your organization made was only from your Security Mill in Maryland?

A. No, we occasionally made some from the Catskill plant, but that is a different quality of cement.

Q. But your Portland cement is from your Secuirty Mill?

A. Yes, with very few exceptions. We also shipped some dark cement from Catskill, but very little of
8056 it. I do not believe there is any of our organization's initials on those papers; that is what makes me not feel that I could really identify them.

Q. You mean these two sheets?

A. Those particular two sheets.

Mr. Leisure: Do you have any means of knowing whether those two identified sheets covered shipments from your mill?

The Witness: Not without I checked them. They may be from a competitor's mill and get the same result in dollars and cents. I should clarify that. One of our competitive mills that adjoins the Security Plant, would get the same net, I am pretty sure, the same freight rates.

Examiner Norwood: Do you identify those as figures that you have used?

The Witness: No, not without checking them. I would prefer to check them and see if they check with our prices, with our nets.

Mr. Leisure: If the witness finds that they are all right, we have no objection. In the meantime I think they should be only marked for identification.

Mr. Wooden: They have already been so marked, on Mr. Brown's identification.

8057 By Mr. Wooden:

Q. And when you referred to competitive mills' net, did you have in mind the Union Bridge plant of the Lehigh?

A. Well, that could be one.

Q. Is that so situated that its net into the same territory would be the same as yours?

A. Well, I really don't know what their nets are. W have to take the freight rate book or the freight tariff. I think that there may be a spread in some cases. They may obtain two cents lower or they may obtain two cents higher.

Mr. Leake: These two papers, Mr. Harte, I should like to ask you some preliminary questions. They might easily relate to a contemplated reduction in the price of cement from your Security plant to meet a competitive price of Charleston, South Carolina.

The Witness: That is correct.

Mr. Leake: For, at the bottom of one of these unidentified papers is a statement that the prospective net figure on the basis of $2.10 per barrel price base in effect at Charleston since January 1st, 1936, and a notice in the column of figures that your actual net as against the prospective net which might have been made up to meet this competitive condition is $1.53 as against an old actual of $1.58.

8058 The Witness: That is possible.

Mr. Leake: I do not object to even these unidentified papers so long as it is understood that they are taken subject to correction and further testimony.

Mr. Wooden: I would like to have the witness check and see if those are the figures representing your own business.

The Witness: May I have those papers?

Mr. Leake: Yes.

The Witness: Do you want me to take them back and check them through our files?

Examiner Norwood: Can you do it now?

The Witness: I don't believe I could, unless I had our freight traffic man alongside of me.

By Mr. Wooden:

Q. Whatever is necessary to enable you to check them, even to the extent of borrowing them overnight.

Examiner Norwood: What is your reaction to these others?

Mr. Leisure: No objection to the others.

Mr. Leake: No objection.

8059 (COM. EX. 316-C, D and G was offered and received in evidence.)

Q. Will you see if you have the originals in your files and then see if we cannot check them here in the morning?

A. Yes, sir.

Q. In other words, you can take such notes from that as you wish.

A. Right.

Q. And then they can be left in the custody of the reporter.

A. Very well.

Q. Mr. Harte, referring to your testimony of a few minutes ago to the effect that on Government business you bid the price that you last heard of, assuming it to be continued in effect in the absence of knowledge to the contrary, did you apply the same method of quoting on commercial business too?

A. No, sir; I would quote the price that we last found to be a competitive price at any particular destination.

Q. In other words, you assume that the last price that you heard of would be the price on the next business that you heard of?

8060 A. That is right.

Q. And on bids to State Highway Commissions, or State Purchasing Agencies, you assumed the price bid on the last bid would be the ones used on the next bid?

A. I would assume so, without there were some freight rate changes. Some of the State Highway Departments, you sell a little bit differently in one State than you do in another. We have some contracts on our books that run with some particular States for three years, and there may be three or four price advances in the meantime, but your contract price is your selling price.

Q. Do you make the same price ordinarily to State and Government business that you do to commercial business?

A. State and Government enjoy the low price, the same price that the dealer obtains.

Q. The same price that the dealer pays?

A. Yes, sir.

8061 New York City, N. Y.
Thursday, June 9th, 1938.

8064 Mr. Leisure: I have this morning a letter from Mr. Neylan addressed to you, Mr. Wooden, dated June 8, 1938, in which he starts by saying: "In compliance with your request, we are enclosing herewith a list of price bases applying at the Lone Star Mills, and also those which we have developed as in effect or having been in effect at other points since January 1, 1933", and I now give you that letter, together with the material, requesting that they be marked for identification.

Examiner Norwood: They will be marked Exhibits 1185-A to D for identification.

(The documents referred to were marked "Commission's Exhibits 1185-A to D for identification".)

8065 Mr. Wooden: Your Honor, I am offering the papers just proffered by Mr. Leisure and which have been marked for identification 1185-A to D inclusive.

Examiner Norwood: Is there any objection?

Mr. Leisure: No objection.

(COM. EX. 1185-A to D was offered and received in evidence.)

8070 (COM. EX. 1175-A, B and C was offered and received in evidence.)

WALTER S. WING, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

8071 *Direct Examination by Mr. Wooden.*

I am vice president and general manager of the Pennsylvania Dixie Cement Corporation. I have been general sales manager since November, 1928, and vice president since July 8, 1936. There are three mills of the Pennsylvania Dixie Company located in Pennsylvania, one in New York State. In Pennsylvania the mills are located at Bath and Nazareth; in New York at Portland Point; there is a mill at Des Moines, Iowa, formerly known as Balley Junction; Clinchfield, Georgia; Kingsport, Tennessee; and Richard City, Tennessee. The total capacity of those mills is 12½ million. I don't know what you mean exactly
8072 by the Hudson Valley district. We are a considerable distance east and somewhat north of Hudson, New York.

Q. Is that the center of the Hudson Valley district, so-called?

A. I presume that is what you mean.

We are about in the central part of the State and Hudson is in the eastern part. I don't know just how wide New York State is. I think it is over a hundred miles.

Q. Which of those mills of your company that you have named are basing point mills?

A. Clinchfield, Georgia; Kingsport, Tennessee, and Richard City, Tennessee.

Q. Just the three?

A. That is right.

Q. They are in the southeastern states. You don't class your Bath mill as a basing point mill at Nazareth?

A. No.

Q. In the Lehigh Valley district?

A. No.

Q. Do you have a mill price in effect at those mills there that was the same as the other mills in the
8073 Lehigh Valley district?

A. I don't know what the other mills have.

Q. What is your price at your Lehigh Valley mill?

A. We have no price at our Lehigh Valley mill.

Q. You have a $1.65 price in effect there?

A. What do you mean? What does that include?

Q. As a basis for figuring your delivered prices.

A. Not at our mill.

Q. You sell and quote ordinarily, do you not, at delivered prices?

A. Yes, sir.

Q. Do you have an area tributary to each of your basing point mills within which your delivered prices are the equivalent of your base mill price plus the freight from the base mill?

A. I don't think I understand your question, Mr. Wooden.

Mr. Wooden: I will ask the reporter to repeat it.

(The question was repeated.)

The Witness: Yes.

By Mr. Wooden:

Q. Will you state roughly what the territory is surrounding each of your base mills that that situation applies to?

A. Well, only very generally.

Q. That is all I expect.

A. A small part of Georgia, I believe; maybe a little of North Florida to Clinchfield. Kingsport is a very small area in east Tennessee; it may work over a little bit in to North Carolina, I don't know. And the Richard City mill there is a very small area in southeastern Tennessee and maybe a little bit of northwest Georgia and northeast Alabama.

8074

Q. What is your base price in effect at those mills at this time?

A. I don't know as I can tell you. I don't have anything to do with making up prices, Mr. Wooden, and I very seldom use them; in fact, I don't use them at all.

Q. Who does have to do with the making of your prices?

A. The clerks in the office, and they are approved by the district sales managers in the respective districts.

Q. They are all under your general supervision, are they not?

A. Just supervision.

Q. Do you know how the prices are made, the general method of making them?

A. Yes.

Q. How are the base prices at your mills arrived at?

A. They are determined by the executives.

Q. In consultation with you?

A. I don't know as you would call it conversation.

Q. Consultation.

8075 A. No, not consultation.

Q. Aren't you one of the executives?

A. There has not been any change in those base prices since I have been a vice president, to the best of my recollection.

Q. Haven't you been consulted with regard to what base prices should be put in effect at your mills?

A. We have presented facts and cited conditions as we find them and it is determined by the executives as to whether we have a base price, or what it will be.

Q. You have been consulted as to whether some of your mills should be base mills and some should not?

A. Not as vice president I have not been; it has not come up.

Q. As general sales manager, haven't you been consulted about such matters?

A. I have not been consulted; I have had some conversations.

Q. Well, all right, we won't quibble about that. You have been in on discussions that led to the decision, have you not?

A. Well, partly; not the entire conversations.

Q. Can you tell me what factors enter into the making of your base price at your mills?

A. No, I cannot.

Q. Haven't you discussed the factors that enter 8076 into it with other executives of your company?

A. I have given them information as to conditions, and how they came to the conclusion I do not know.

Q. Do you know whether or not your base prices are inclusive of costs plus reasonable profit?

A. I don't know.

Q. You don't know what your costs are when you make sales?

A. I don't know about the costs.

Q. Do you have any discretion to vary the prices that are arrived at in your organization?

A. May I have that question read?

(The question was repeated.)

The Witness: No, sir.

By Mr. Wooden:

Q. And I take it your salesmen have none?

A. No, sir.

Q. The district sales managers have none?

A. No, sir.

Q. Do your salesmen carry and use the freight rate books published by the Cement Institute Freight Rate Bureau?

A. Some do and some do not.

Q. Do the ones which do not carry them and use them, are they the ones which sell into territory where arbitrary prices are in effect?

A. I don't know what you mean by "arbitrary". Do you mean special prices?

8077 Q. Yes.

A. Well, if they are in a special price zone, and also there includes the area outside of the special price zone, then they would carry the freight books.

Q. In other words, they would carry the freight books wherever the regular prices prevail?

A. You mean mill price?

Q. Yes.

A. Yes, sir.

Q. Do your salesmen use the freight-rate books in calculating the delivered prices?

A. That is the purpose of it.

Q. When other mills come into the territory in which your base price plus freight makes the delivered price, do they make their delivered prices the same as yours?

A. I don't know what they do.

Q. You don't know whether other mills are meeting your prices or not?

A. Some mills are.

Q. You do not make it a business to find out what your competitors are doing?

A. We certainly do.

Q. What was that?

A. We certainly do.

Q. Well then, don't you know whether other

8078 mills are meeting your price or beating it?

A. I know some of them are.

Q. Some of them are what?

A. Some of them are coming into the area that you speak of, that is made on our mill price plus our freight,

and are, I presume, meeting our prices, but how to figure it, I don't know.

Q. Would you—Your would soon know it if they were going below your price in that area, wouldn't you?

A. We would usually, in the case of dealers.

Q. How about it in the case of bids on public work?

A. In public bidding we would know it after the bidding was over.

Q. Haven't you found that on public bidding the prices in those territories are ordinarily the same as yours?

A. Usually.

Q. When your mills go into a territory where other base prices prevail, do you meet the delivered price in that territory that are figured from the base mills to destination?

A. If we want the business, we have to.

Q. You don't go below it?

A. Not intentionally.

Q. Do you sometimes go above it intentionally?

A. No; we just put in a bid.

8078 Q. You have had no cases where you would bid high because you did not want the business, but still would bid?

A. I don't think we have ever had to do that.

Examiner Norwood: He asked you if you did. Have you ever done that?

The Witness: I cannot answer that.

By Mr. Wooden:

Q. Do you, when your base mills make a change in their base prices, do you send out notices to the trade giving advance notice of the effective date of the change?

A. Are you talking about an increase or a decrease?

Q. Well, if it is different for the two, specify the difference.

A. In cases of an advance we usually give the five days notice, but sometimes it may be less; sometimes it might be that it was immediate.

Q. Can you put your price up and retain your business territory, unless others follow along with that increase?

The Witness: May I have that question repeated, please?

(The question is repeated by the reporter.)

A. No, we cannot.

8080 Q. If you put out a five-day notice of an increase, you have the opportunity of withdrawing it in the event that you find your competitors have not gone along with it.

A. We have what?

Q. You have the opportunity of withdrawing it before it actually becomes effective in the event your competitors do not follow along with it?

A. Before or the day it is effective, or afterwards.

Q. Do you follow the same method of pricing or quoting delivered prices on your commercial business as you do on bidding on State and Federal business under sealed bids?

A. Yes, on commercial freight rates.

Q. You have mentioned commercial freight rates. What distinction do you have in mind in making that mention?

A. On the Federal Government bids, we give them a destination cost and in effect a mill price.

Q. You do not, however, sell them strictly f.o.b. mill?

A. Not strictly.

Q. State Governments buy and take delivery on commercial freight?

A. Yes.

Q. And it is only on the land grant lines that the Federal Government gets any benefit in the way of reduction below the commercial freight, isn't that right?

8081 A. I don't know much about freight rates, but we always ask the traffic department what the rates are and if they say it is a land grant rate, they figure out what it is and tell us.

Q. But the Federal Government purchases and buys and ships over many roads that are not land grant roads and land grant rates?

A. I presume so, because we make up a lot of bids in which we do not use land grant rates.

Q. How do you determine the price that you will quote in that case?

A. Where the land grant rate is used?

Q. Yes.

A. We use the same calculation that we do with the commercial rates.

Q. In other words, your base price plus freight if it is in the territory where your base price prevails?

A. Yes.

Q. And if it is in territory where another base price prevails, you use that as the calculation there?

A. Yes.

8082 By Mr. Wooden:

Q. Mr. Wing, I show you papers marked for identification 1186-A and B. Will you identify that as a list of base prices in effect on April 1, 1935, as put out by your company?

A. This looks like one of our price lists.

Mr. Wooden: I offer that in evidence.

Mr. Leisure: Subject to check as to correctness,

8083 we have no objection.

The Witness: May I look at that just a minute again?

Mr. Leisure: Yes.

(The papers are examined by the witness.)

(COM. EX. 1186-A and B was offered and received in evidence.)

Q. Mr. Wing, do any of your mills sell into Michigan?

A. No, sir.

Q. Do any of them sell—how far west do any of your mills sell?

A. Oh, just a little west of the west boundary of Iowa.

8084 Q. Do you make any sales in Texas?

A. No, sir.

Q. How far north do your sales from the Iowa mill go?

A. They go into all of the States there, the northwestern States, the State of Wisconsin and the Dakotas.

Q. I call your attention to the fact that this exhibit 1186-A contains base prices at Alpina, Michigan, and El Paso, Texas. You did not pick up the information in the field through your salesmen of those base prices, did you?

A. We find those out through the purchasing agents of railroads, and we have those only for the purpose of quoting railroads.

Q. The reference to minimum freight is on this list 1186-A and B. You do not get that from your salesmen in the field, do you?

A. We get that through information obtained principally from railroads.

Q. I beg your pardon.

A. We get that principally from railroads.

Q. What railroads give you information designating certain prices as basing point prices of particular mills?

A. What they do?

Q. Do they give your information designating certain prices as the basing point prices of certain mills?

A. They do not give us that information unless
8085 we can possibly find out from them what price they have f.o.b. their tracks, and then we can tell from that information.

Q. But you do not get it direct from the railroads, what the base price of a certain mill is, do you?

A. No, not directly.

Q. Have you circulated this list of base prices among any of your competitors?

A. We have not. I don't know whether they have any or not.

Q. How would a competitor get your base prices in a list of this sort?

A. I don't know.

Q. Do you give any circulation to a list of this sort?

A. The circulation is our own people.

Q. Intended for the information of your own people?

A. Yes, sir.

Q. What people? Your salesmen?

A. Salesmen and traffic—I don't know what constitutes the whole list.

Q. Do you wish to testify that you do not and have not circulated any such list among your competitors?

A. We may have given them out; I don't know. It is not our practice.

Q. If it should be shown that this particular list that you have identified came from the files of one of your
8086 competitors, what would you say in explanation?

8088 Q. What is your answer, Mr. Wing?

A. I would say I do not know how he got it.

Q. Do any of your mills sell into Northern Ohio?

A. Some old friends of mine give me an order for a car once in a while.

Q. That is quite exceptional? Do you have your salesmen traveling in that territory?

A. No.

Q. Can you explain how you get this information about there being no trucking in Ohio outside of Cuyahoga and Lucas Counties?

A. I see dealers from Ohio quite frequently. I did business in Ohio for twenty-one years, and I know a lot of those people.

Q. But you did not get it through your salesmen
8089 that are traveling in that territory?

A. Not in north Ohio. We only occasionally send a salesman to Cleveland to solicit contractors doing business in the east or west.

8090 Q. Do you have a salesman calling on the trade in Oswego County, New York?

A. Yes, sir.

Q. From what mill?

A. Portland Point.

Q. Does your Portland Point Mill sell into Boston?

A. No, they do not. But wait a minute. The Boston mill does not sell. It is optional with us whether the cement that is sold in Boston is shipped by the Lehigh Valley or Portland Point.

Q. Do you have salesmen traveling the Boston territory?

A. Very thoroughly.

Q. There is reference made to arbitrary prices here at Boston and Fort Des Moines, and in Long Island and New Jersey, and reference made to a special schedule. A while ago you did not recognize apparently the use of the word "arbitrary" in that connection. What do you mean by "arbitrary prices" that are referred to in your circular there?

A. I presume that is what our clerk called them. I did not know whether you called them the same thing or not.

Q. Aren't you familiar with the term in the industry? Isn't it widely used in the industry?

A. It is frequently used.

Q. Are not arbitrary prices the delivered prices
8091 which are not the sum of the base price plus the freight?

A. I presume so. I call them special prices.

Q. That is what they are, no matter what you call them?

A. Yes.

Q. Showing you papers marked for identification 1186-C and D, that is, for your information, a duplicate of 1186-A and 1186-B. Do you recognize it as such?

A. Apparently so.

Mr. Wooden: I will offer 1186-C and 1186-D, your Hon-

or, with the explanation that the two lists came from different sources, although they are duplicates, and it is that fact that I am interested in.

8092 Mr. Wooden: (Interrupting) Your Honor, I will leave the second set of papers, 1186-C and 1186-D, merely marked for identification, and identified by 8093 the witness and not make the offer at this time.

Examiner Norwood: All right.

By Mr. Wooden:

Q. Mr. Wing, do you know the signature of your Mr. George Kilian?

A. Yes, sir.

Q. Who is Mr. Kilian?

A. Secretary and treasurer of the company.

Examiner Norwood: Off the record.

(Discussion off the record.)

By Mr. Wooden:

Q. Is that Mr. Killian's signature on the paper I show you?

A. It looks like it. I am just identifying the signature.

Mr. Wooden: Your Honor, there is one paragraph in the letter signed by Mr. Kilian which the witness has just identified—that is, he has identified the signature—that I would like to offer, but it is one paragraph out of a five page letter containing many other subjects, in which I have no interest at the present time.

It is a letter dated July 17th, 1931, signed by Mr. Kilian, addressed to the Federal Trade Commission, attention of H. L. Anderson, Chief Examiner.

8095 (The documents referred to were marked "Commission's Exhibits 1187-A to E" for identification.)

8096 Mr. Leisure: It is my understanding then that you have corrected the offer to include the whole question and answer under No. 11?

Mr. Wooden: Yes.

Mr. Leisure: No objection.

Mr. Wooden: May it be understood, your Honor, that the reporter may copy that portion of the letter into the transcript and not use the entire letter?

(Discussion off the record.)

Mr. Wooden: The portion of the letter which is offered was in reply to a question propounded in the questionnaire sent by the Federal Trade Commission to the

various cement companies, and this particular question is the same, as I understand it, as was propounded to a number of other companies and which was answered by them. In having that portion of it copied into the record and the letter itself not offered, it is understood, of course, that it is from an authentic letter written and signed by
Mr. George Kilian, the secretary-treasurer of the
8097 Penn-Dixie Company.

Examiner Norwood: Counsel may read such portions of it as he deems absolutely necessary in the record.

(The portions directed to be inserted in the record are as follows:

11. Give full explanation of your method of determining delivered prices of cement at any particular point when submitting sealed bids, or when meeting other competition:

From time to time we set base prices at all or some of our plants which with freight to different destinations added are the prices at which we offer our cement for sale. Such base prices are, in reality, maximum prices above which we do not sell.

Cement is bought delivered at destination and the prices of different brands at a given point are well known to all buyers. We are in constant touch with these buyers by salesmen, letter, telegraph and telephone and know at all
times what competitors' prices are. When a com-
8098 petitor changes its price we know it immediately,
usually within a few hours.

Our custom is to meet the lowest prices of competing companies at points of delivery, except when such prices with freight rates from our mills deducted yield us such low mill prices that we do not desire at the time to sell. If we do not meet competitors' delivered prices we cannot sell our cement and are out of the market for the reason that cement is a standardized product, all of it manufactured and sold to meet the Standard Specifications of the American Society for Testing Materials and of the United States Government. Consequently, for all practical purposes, one brand of cement is as good as another and no one company can sell its brand at a higher price than a competing brand. The attached extract from Brief submitted to the United States Senate by American Cement Manufacturers in connection with Tariff Act of 1929 is more explanatory.

As stated, the delivered prices of all companies at different points are well known at all times and by deducting railroad freight rates, which are published and well known, from producers' plants to points of delivery we readily determine what each company's base price is at its mill. In instructing our organization from time
8099 to time as to what our prices are, we do not list the delivered prices at each of the thousands of delivery points where we are selling or seeking to sell, but instead use an easier and simpler method. Thus knowing what our competitors' base prices are, we give these base points and prices, together with the published freight rates from such base points, to our organization from which they can readily figure by the above mathematical shortcut the competitor's prices at each delivery point, and which prices they are usually instructed to meet.)

By Mr. Wooden:

Q. I show you, Mr. Wing, papers marked Exhibit 1188 A and B for identification. Will you identify that as a list of base prices prepared and filed under your name as general sales manager of the Penn-Dixie Company.

A. (Examining) That looks like ours.

Mr. Wooden: I offer them in evidence.

(Discussion off the record.)

8100 By Mr. Wooden:

Q. Do you have anyone in your organization, Mr. Wing, by the name of C. S. Crawford?

A. What is that name?

Q. C. S. Crawford?

A. Not that I can recall. Not at the present time.

Q. Can you say whether or not those two sheets (handing papers to witness) are parts of the same list of base prices?

A. I do not know whether these two sheets were together in the first place or not. I cannot say that.

Q. Don't the notes at the top of the second page tie up with notes on the first page, with regard to truck prices at Cleveland?

A. That might be true, but this might be attached to another one, because that is the same information, I think, that was on the other exhibit.

Mr. Wooden: It might be a different date, possibly.

I will temporarily withhold it, and withdraw the offer.

Examiner Norwood: Off the record.

(Discussion off the record.)

By Mr. Wooden:

Q. Showing you papers marked for identification
8101 1188-C and D, Mr. Wing, do you recall submitting by mail a list of revised base prices to the Federal Trade Commission, along in 1933?

A. I don't recall ever having seen this, Mr. Wooden.

Q. You cannot identify that as a list of base prices that your company established or recognized as of October 20, 1933?

A. (Witness examines the papers marked 1188-C and 1188-D) No, I couldn't tell you anything about that.

Q. Showing you paper marked for identification 1189, purporting to be an inter-office communication addressed to you by W. Jess Brown, dated February 13th, 1930, do you recognize that as a photographic copy of a communication from the files of your organization?

8102 A. (Examining paper) This looks like our form of inter-office stationery, and it looks like Mr. Brown's signature, and this pencil notation is my handwriting, but I don't recall the memorandum at all.

By Mr. Wooden:

Q. You recognize all of those elements of identification in the document?

A. Yes.

Mr. Wooden: I offer it in evidence.

8107 Examiner Norwood: (Interrupting) This does not refer to your client in any way, does it?

Mr. Zimmerman: It does not seem to, but counsel says it is admissible because it is an admission. Now, I state those facts—

Examiner Norwood: (Interrupting) We have a stipulation on the record that it is not to apply to your client unless the entire record connects him up with all of these transactions.

8109 (COM. EX. 1189 was offered and received in evidence.)

Q. Mr. Wing, the Ironton, Ohio base, is that a dual base?

A. What do you mean by "dual base?"

Q. I mean, are there two base prices in effect at Ironton, Ohio, depending on the territory into which the shipments are made?

8110 A. Are you talking about the present time, or some specific date?

Q. I will change it. I will say: Has there been a dual base at Ironton?

A. There has been.

Q. Is there no longer a dual base at Ironton?

A. I really don't know right now. I don't keep those things in my head. I don't use them.

Q. You had two base prices for Ironton on your list of base prices, didn't you?

A. If we thought there was a dual base at that time, we showed that.

Q. Don't you know, as sales manager of the company, that for a period of years there were two base prices in effect at Ironton, depending upon the territory into which shipments were made?

A. I believe I said that.

Q. What was the territory into which the lower Ironton base applied?

A. It was north of the Tennessee Kentucky line. I am not so sure, but I think it was north of the Virginia-North Carolina line.

Q. And the higher Ironton base, did that prevail in the territory north of the Ohio River? I mean, did it apply north of the Ohio River?

8111 A. The higher base?

Q. Yes.

A. No, it did not. When I answered the previous question I thought you asked where the lower base applied.

Q. That is right.

A. North of the Ohio River is still where the lower base applied.

Q. Where did the higher base apply?

A. South of those lines I mentioned, according to the information we found in the field.

Q. Did you have salesmen running all along the State lines to find out where that base applied, at the State line?

A. Our salesmen's territories include all of those, those two State lines, those two groups of State lines are covered by salesmen.

Q. Did you have information from salesmen as to every border town, showing the delivered price made or based on Ironton, all over the line?

A. Not necessarily, but when we find dealers' quotations north and south of them—not necessarily on the line—it proves that to be the fact.

Q. You figure that from a sufficient number of quotations, to get the base?

A. Yes.

Q. And from that time on you do your calculat-
8112 ing on the basis of those figures?

A. Yes, sir.

8113 Q. Mr. Wing, I show you papers marked for identification Exhibits 1190-A to D, inclusive. Will you identify them as authentic photostatic copies of documents from the files of your organization?

A. (Examining paper) This 1190-A seems to be.

Q. Does that bear your signature?

A. Yes. And 1190-C appears to be all right. Not having any recollection whatsoever of having seen the others, I cannot say anything about them. This 1190-D probably is, but I don't remember seeing it.

Q. 1190-A and 1190-C are the ones that you recognize and accept?

A. Yes.

Mr. Wooden: I will offer Exhibits 1190-A and C for identification in evidence.

By Mr. Wooden:

Q. Will you tell me whose handwriting this is in the upper left hand corner of 1190-D?

A. (Examining paper) No, I cannot. This should have been made, if it was made, by one of our people, McBride—he had a form which would show a heading that he used, and I don't know why that did not get on the photostatic copy. It ought to have been right above this line right up in there (indicating).

Examiner Norwood: Was that always used?

8114 The Witness: What is that?

Examiner Norwood: Was that used on all the documents?

The Witness: That man was a salesman, and all of the salesmen report on a standard form, and it is headed with some such caption as "salesmen's report", or "special report", or something like that.

Mr. Leisure: This 1190-C, what is it; do you know?

The Witness: It is a listing of the sealed bids submitted after the bids had been opened and read out.

Mr. Leisure: That is the publication that was made of those bids?

The Witness: This is our Philadelphia office sales manager reporting on a public opening of bids.

(COM. EX. 1190-A and 1190-C was offered and received in evidence.)

By Mr. Wooden:

8115 Q. Has your company made a number of bids for delivery of cement to the Federal Government at the Panama Canal?

A. We have made quite a few.

Q. In making those bids, has it been your practice to build up your price on the basis of the lowest Lehigh Valley base for export?

A. What do you mean by the lowest Lehigh Valley base?

8116 Q. Well, that is the language used in Exhibit 1190-A, you said you assumed that Florida Portland Cement Company had made their price by taking the lowest Lehigh Valley base for export, which is to Porto Rico, at $1.80 per barrel?

A. Is that the one I just approved?

Q. Yes.

A. Mr. Wooden, I don't recall of Penn-Dixie having what you referred to a while ago as a dual base at the Valley, one for domestic shipments, and one for export.

Q. I didn't ask you anything about a dual base at the Valley.

A. But I have no idea what you mean by using the lowest Valley base.

Q. Is there a base price for export?

A. I don't know. We are not doing any export business, so I don't know, at the present time.

Q. Have you made your bids for delivery at the Panama Canal by using an export base price.

A. It certainly has not been shown in any price list that you produced here.

Q. There is a reference to an export list there.

A. Is there? I just glanced at one a moment ago and didn't see any.

Q. 1186-A. Along with the other base prices it says, "Export, cash discount only, referred to New York."

8117 A. All export quotations are handled out of New York.

Q. Under your general supervision?

A. Under my general supervision.

Q. Can't you tell me how your quotations to the Panama Canal are built up?

A. I can't tell you that. This export down here is—by export, you are talking here, I believe, is movements to foreign countries and not to the United States possessions.

Q. Why do you have that in the list of base prices, any reference to export prices?

A. So that if any office should receive an inquiry, which they do, in the South, from Cuba, they will refer them to New York.

Q. Isn't there an export price to Porto Rico?

A. Do you mean do we have one?

Q. Yes.

A. I know we are not quoting them, so I assume we have not.

Q. You don't know what you meant by your reference to the lowest Lehigh Valley base for export, which is to Porto Rico?

A. You are correct. I don't know. How long ago was that, again?

Q. This was 1930.

A. My memory doesn't work very well eight years back.

8118 Q. You have made more recent quotations, have you not, to the Panama Canal?

A. Yes.

Q. Will you tell me how you make up your quotations for delivery in the Panama?

A. I just said we quote them the same as we have before. They use the same mathematics. I don't know what they were based on, or anything about it.

8119 Q. How do you determine the price loaded on ship for delivery to Panama, or the cost loaded on ship?

A. I cannot tell you that, sir, because when we get from our traffic department the cost of transportation to the

point of delivery, that is all combined by our traffic department and given to us as a freight rate.

Q. Do you use the same base price for quoting on Panama business?

A. I just told you I don't know. I don't remember. I know we have been competitive recently and have not gotten any business, and we just quoted the same as we did the time before.

Q. When you say you have been competitive, you mean that you have made the same price delivered in Panama as the other bidders made?

A. As the result of the opening of the bids.

8121 Q. Mr. Wing, the last question I asked you before the noon recess was:

"Q. When you say have been competitive, you mean that you have made the same price delivered in Panama, as the other bidders made?"

Your answer was:

"As the result of the opening of the bids."

Do you mean to answer in the affirmative to my question?

A. As I recall it, we were competitive, and quoted as low as those that did quote low. There may have been some high bids; I don't know.

Q. You use the same terminology as being competitive on your commercial business, when you make the same delivered price that your competitors make at a given delivery point?

A. That is what I mean by that expression.

8122 Q. Why is it that your concern sells and quotes only at delivered prices and does not sell and quote on an f. o. b. mill price basis?

A. We find that our customers want to know what the cement is going to cost them at the point where it is used or consumed.

Q. Would you sell anyone who wished to buy f. o. b. mill on that basis, on an f. o. b. mill basis?

A. Our policy would not permit me to do that now for the sales department.

Q. You would not sell the Federal or State Governments on that basis f. o. b. mill?

A. We are not permitted, according to our policy, to quote that way at this time, except as I said this morning, where land grant rates control or are in use, and then, in effect, we quote a mill price.

Q. But it is not an f. o. b. mill price with no considerations of the transportation cost?

A. No, sir.

Q. Why is it that State Governments, for instance, want to buy f. o. b. mill, as the State of Illinois did several years ago, that you will not sell?

A. We do not do any business in Illinois. We have a little, but we are not interested.

Q. You have done some business in Indiana?

8123 A. No, sir.

Q. Why wouldn't you sell the Federal Government f. o. b. mill when they ask for it?

A. We figure that they want to know what the cost is at destination, and then we want to be, to use my expression, competitive at the point where they are going to use the cement.

Q. You mean by that as you said before, that you make the same prices at the delivery point that your competitors make?

A. That we think they are going to make.

Q. Why is it that you as vice president and general sales manager are not allowed any more discretion than you seem to be allowed in the making of prices.

8124 The Witness: Because I do not have the authority to do it.

By Mr. Wooden:

Q. Well, my question is why you do not have the authority?

The Witness: I don't know.

8125 By Mr. Wooden:

Q. Have any of your executives of your company discussed with you the extent to which you should be allowed discretion in the making of prices?

A. Will you read that question?

(The question was read.)

The Witness: No, sir.

By Mr. Wooden:

Q. What instructions do you have from your executives in the way of price making?

A. As the result of information that I give them, they tell me what price the sales department will quote or accept.

8126 Q. Do you mean what base price you will adopt at your mill?

A. It might be, or, whether we will meet competition based on other mills.

Q. Do you go to them with every particular case of that sort that comes up?

A. No, sir.

Q. Then to what extent do you exercise your own discretion in making or meeting prices?

A. I do not have any discretion to meet prices.

Examiner Norwood: Do they give you some formula for figuring up prices?

The Witness: Yes, sir.

Examiner Norwood: What is it?

The Witness: Based on this evidence that was produced this morning, your Honor.

By Mr. Wooden:

Q. Do you mean by that that you have instructions to put your base price into effect at certain mills and then calculate your delivered price by adding the freight to it?

A. Yes, sir.

Q. And when you go into territory where other base prices are, the prices of other mills, are in effect, that you equalize your delivered prices with theirs?

A. Yes.

8127 Q. And in doing that, following that procedure, you use the freight rate books that the Freight Rate Bureau of the Institute publishes?

A. I presume they are used by the clerks.

Q. I show you, Mr. Wing, papers marked for identification as 1191-A to 1191-H, inclusive. They purport to be various tabulations regarding bids on the Illinois State business in 1930 and 1931, I believe. Can you identify those papers as copies of papers from the files of your organization.

8128 A. (Examining papers.) I cannot say whether or not these came out of our files. There is no handwriting or pencil notations on them that indicate that they were, but they may have, particularly because the Penn-Dixie is listed first in some of this tabulation, but I don't remember.

Q. You did submit bids on Illinois Highway Commission bids in 1930 and 1931?

A. I don't know about 1931. I know we bid there in 1930; we did in some of those border counties, because Mr. Smith, the president of our company, had just come from that territory and knew some of those people and we took a shot at some of that business.

Q. It was customary, wasn't it, in your organization, to make up tabulations of results of State Highway Commission biddings on which you participated?

A. Some of the States furnished them. I don't know where those came from.

Q. Do you know any of the handwriting at the top of the columns in Exhibit 1191-D?

A. No, sir. I looked at that particularly and I do not recognize it or these initials.

Q. Do you recognize the stamp on Exhibit 1191-A?

A. No; I tried to but I don't remember that. I don't know whether that is what we used now or not.

Q. Is it what you used then?

A. I don't know.

8129 Mr. Leisure: May I ask the witness a question?

Examiner Norwood: Certainly.

Mr. Leisure: Is it the practice of your company, or do you know, that in the past, at least, you have made up compilations similar to these after public lettings, showing what the bids were?

The Witness: Yes, sir, we do.

Mr. Leisure: So far as you know, this may have been that type of compilation?

The Witness: That may have been furnished by the State.

Mr. Leisure: It may have been furnished to you by the State?

The Witness: Yes.

Mr. Wooden: You are referring to the tabulation of the bids themselves. There are some other papers there.

Mr. Leisure: 1191-B and 1191-C might have come from the State, as I understand you?

The Witness: Might have; yes.

8130 By Mr. Wooden:

Q. Mr. Wing, can you say why some of your mills are basing point mills and some are not?

A. No, I cannot say as to that.

Q. Have you had a part in the decision as to which ones should be basing point mills and which should not?

A. Not in the decision.

Q. Did you have part in the conference which led to the decision?

A. Not a conference, no.

Q. Did you express your views as to which should be basing point mills and which should not?

Examiner Norwood: Tell just what part you had in it?

A. I think I expressed my views in one instance.

Q. What were the factors, from our point of view as vice president and general sales manager, which determined whether one of your mills should be a basing point mill and another not?

A. Since I have been vice president, that has not been discussed.

8131 Q. Well, based on your experience in the past, what are the factors that enter into that question?

A. I don't know because I was not a party to it.

8136 By Mr. Wooden:

Q. Did Mr. Blaine Smith have anything to do with the decision a. to what mills of yours should be made basing points, and what basing point prices should apply, when he was with your company?

The Witness: I would like to have the first part of that question again.

Examiner Norwood: Read it.

(The question is read by the reporter.)

A. He had something to say about it, I presume, as our chief executive officer.

Q. Is he now president of the Universal Atlas Company?

A. To the best of my knowledge, he is.

Q. Will you supply a statement, Mr. Wing, which will show for each of the last five years, the production and capacity of each of your plants, and distribution of

8137 each plant, shipments by States, and the average mill net realized at each plant?

The Witness: Will I do that?

Mr. Wooden: Yes.

Mr. West: If your Honor please, Mr. Wing has no authority to make any commitments on behalf of the company in that connection. I will take it up with the company and if there is no objection there, the material will

be supplied, if it is available. He cannot make any commitments.

Examiner Norwood: That answers the question, I think.

Mr. Wooden: Will you undertake to do that, and supply it to his Honor, Judge Norwood?

Mr. West: I will take it up with the company, Mr. Wooden, and if the material is available, and if they determine that they will supply it, I will give it to Mr. Leisure.

8138 By Mr. Wooden:

Q. You keep such figures in the ordinary course of your business, do you not, Mr. Wing?

A. The sales department keeps a record of shipments, but I don't know that they keep the records—they do not keep nor make up a record of the mill net.

Q. You have a record of shipments by States?

A. Yes, sir.

Q. And you report that to the Institute or to the Bureau of Mines?

A. We report it to the Bureau of Mines.

Q. How about the Institute?

A. I don't believe it was ever given to the Institute.

Q. Your average mill net, is that figured by dividing the total number of barrels into the total receipts?

A. That is done in our accounting department. I don't know anything about it.

Q. Well, as sales manager you know how the average mill net is calculated, don't you?

A. I would.

Q. Isn't it done that way?

A. I presume it is.

Q. In billing your customers, your commercial customers, do you calculate the freight on the face of the invoice and have them deduct it, paying the railroad
8139 company the freight and paying you the balance of the invoice?

A. The invoicing is not done by the sales department.

Q. Don't you know how it is done?

Mr. Leisure: That was not the question.

Examiner Norwood: He asked him another question.

The Witness: What was the question?

Examiner Norwood: Do you know how the invoicing is done?

The Witness: I know that freight is not allowed when it is a prepaid point.

By Mr. Wooden:

Q. That is the exception, isn't it, where there are prepaid points, but isn't the great bulk of your business on a basis where the purchaser deducts the freight from the face of the invoice?

A. Where the purchaser does?

Q. Yes.

A. Yes, sir.

Q. And remits the balance to you?

A. Yes, sir.

Q. And that balance becomes your mill net, doesn't it?

A. Yes. If he takes the discount it is one thing, and if he don't, it is another.

Q. You are referring to the cash discount?

A. Yes, sir.

8140 Q. Has your company ever shipped cement from its mills for the account of other mills?

A. Yes, sir.

Q. Under what circumstances?

A. I have never asked another mill or company that asked us to ship why they asked us to do it.

Q. Mr. Wing, have any of your bills to your knowledge shipped for the account of other mills, competitive mills, or vice versa, because of any effort to elimiinate cross-freighting?

A. No, sir. You mean cross-shipping to save disadvantage in freight?

Q. Yes.

A. The Penn-Dixie, no.

Q. You neither shipped for nor had shipments made for your account in connection with any efforts to avoid cross-freighting and saving extra cost of that cross-freighting?

A. We have not.

Examiner Norwood: That has not been done for your company?

The Witness: What is that?

Examiner Norwood: That has not been done by your company for another company?

The Witness: No, and when we ship for others, as 8141 I said, we have not asked why they wanted relief.

Examiner Norwood: You had no idea why?

The Witness: I don't know why they wanted us to ship.

By Mr. Wooden:

Q. Do you remember any good sized shipments that you have made for the account of other mills?

A. What do you mean by "good sized shipments"?

Q. A shipment of some thousands of barrels, say, in a month's time.

A. If we have shipped for another company?

Q. Yes.

A. Well, I don't know what the aggregate was that we shipped for one company here last year. It continued over quite a period of time. I don't know whether you call that sizeable or not. —

8142 Q. What was, approximately, the amount?

A. I do not know, sir.

Q. What was the company?

A. Alpha.

Q. Was this the only one you shipped for their account in the last year?

A. In 1937?

Q. Yes.

A. We may have shipped some cement for other companies that was of a particular type, which they had run out of.

Q. I mean the standard Portland?

A. Not outside of the Alpha Company, I am quite sure.

Q. Can you say to what delivery points the shipments for Alpha were made?

A. No, I cannot name any of them.

Q. Or what territory they went into?

A. It was the area served by the mills that were in difficulty.

Q. Have you had other mills shipped for the account of your company?

A. I do not believe last year we ran out of any of these special cements. No one shipped any standard Portland for us, but they might have shipped last year cement, special New York State Highway Inspection, or something of that sort, and other companies shipped some trick

8143 cement that we did not make, for us.

Q. I am talking about standard Portland.

A. Not standard Portland.

Q. Have you had cases where because of overflow of orders in excess of capacity you shipped for other mills, or vice versa?

A. I don't know what the trouble was when we shipped for other mills, what their troubles were; but no one had shipped for us, because of large volume of orders.

Q. When you ship for the account of other mills, how is the price determined and the settlement made?

8144 A. That has varied.

Q. All right. Give us the variations.

A. Back at one time it was ten cents a barrel, which we, the Penn-Dixie, called a manufacturers' discount; and then, where it has been in excess of that, that depended upon what the trouble was that the mill was having.

Q. What was the manufacturers' discount figured from?

A. Delivered price. It was not a percentage, so it did not make any difference. It was ten cents a barrel, I said. We called it, though, a discount, you see.

8145 Q. It is just as well figured from the mill price as the other?

A. Well, it is ten cents a barrel whatever way you figure it.

Q. Did you make delivery in the bags of the other company?

A. We have done it both ways, I believe; mostly in our own bags.

Q. What is the paper I show you marked Exhibit 1192 for identification?

A. (Examining paper) Mr. Wooden, this is an announcement of a revision in our marketing policy.

Q. Put out to your retail trade as of the date shown?

A. To the people to whom it is addressed, the dealer trade.

Mr. Wooden: I offer it in evidence.

Mr. Leisure: No objection.

(COM. EX. 1192 was offered and received in evidence.)

Q. Referring to this exhibit 1192, did you inaugurate the policy about that time of allowing dealers to handle all of your sales of cement for Emergency Relief Agencies, whereas prior to that time you had sold direct to all

8146 Federal Government business?

A. I don't remember when we made that change in policy, whether it was at this time or not.

Q. Can't you say whether before the Emergency Relief Agencies came into being, that you sold direct to the Federal Government all of its needs?

A. I believe that is correct; all the major departments of the Government were sold direct.

Q. In carload lots?

A. Oh, yes.

Q. I notice you speak of a revision in this Exhibit 1192, a revision which increases the amount of business which will be sold through dealers. Is that what you understand the revision to conisist of, giving the Emergency Relief business to the dealers?

A. Yes, then I think possibly there were some other changes that increased the volume to the dealers in this item of County business. It may not have been at this time, though; it may have been before.

Q. You say County business?

A. Yes; No. 3 on this (indicating).

Q. Wasn't that some time before? Wasn't that several years before that that County business was considered dealer business?

A. I remember that we had an awful lot of com-
8147 plaints when the Code was being written, and presented from the dealers because it was not in the class of dealer business.

Q. The Code section was suspended, was it not?

A. Well, this County stuff came in at the formation of the Code, and whether that County business that went through dealers was increased at that time or not, I cannot say. It may have been prior to this time.

8148 By Mr. Wooden:

Q. Mr. Wing, one more question: I want to ask you to produce, along with the other information asked for, a list of the base prices in effect at your various mills since January, 1933, and a list of other base prices that you found in effect, other mills' base prices that you found in effect, during the same period.

A. You want the same sort of information since when?

Q. Since January of 1933.

A. All right.

Q. Giving the date of each change.

A. Yes.

Q. That should include the date of any changes for each base.

A. Yes.

Cross Examination by Mr. Leisure.

8149 Q. Mr. Wing, Mr. Wooden asked you about changes in prices and your five-day notice, and then he suggested that if your competitors did not follow you, you could withdraw. Do you remember that testimony this morning?

A. Yes, sir.

Q. Now, as a matter of fact, you can withdraw the price whether your competitors follow it or not, if you choose to do so; the notice so provides, does it not?

A. That is correct.

Q. What is the purpose of this five-day notice?

A. Well, that enables dealers, for example, that have definite commitments, to get them into contract form and on our books, so that they can get cement to back up the commitments that they made.

Q. And what would happen if you did not give any such notice?

A. Well, there would be an awful scramble to get business on our books, and accepted, and I presume if we did not give the notice, it would be option with us whether or not we would have to accept the business.

Q. Would your dealers complain about it?

A. They certainly would, because it would be between themselves and their buyer, and it would injure them to the extent of the price increase.

8150 Q. Now, Mr. Wooden also asked you about selling f.o.b. mill, and I think you said the only instances in which you did that was when you sold to the Government on land grant rates, and he then said "That was not strictly selling f.o.b. mill". If the Government takes title at the mill where land grant rates are concerned, what is the difference in that and selling f.o.b. mill? Isn't that equivalent to an f.o.b. price?

A. I said that this morning in effect it was selling f.o.b. the mill.

Q. Now, in this Exhibit 1186-A, which gave prices in effect at certain places, and I think you said that the sales-

men brought in these prices which enabled you to figure back and determine what base price was effective there.

A. In most every case.

Q. In doing that, it is not necessary, as suggested by Mr. Wooden, for the salesmen to run up and down the Mason-Dixon Line as he suggested, or State lines, and find out just where the line is drawn? You can take a price and figure it back and determine what base it came from.

A. Exactly.

Q. Wherever you find it in the field?

A. Exactly.

Q. So it is not posting salesmen along any desig-
8151 nated lines, is it?

A. No.

8153 Q. And have you ever received any instructions, or have you ever given any instructions to the effect that, to quote prices on the basis of the Institute Freight books, regardless of whether the Institute rates were accurate or not? Have you ever given any such instructions, or ever received any such instructions?

A. When we were figuring a price—let me put it this way: if our traffic department would notify us of an incorrect freight rate in the Institute book, we would use the corrected freight that he gave us, whether it was lower or higher. No, we would use it if it was lower.

Examiner Norwood: You mean you would use that in pricing as well as shipping?

The Witness: Yes, sir.

By Mr. Leisure:

Q. Would these freight books help you to determine the freight from the competitors' mill to a destination where you were trying to sell cement?

A. It would give that information.

Q. Would that information be of any assistance to you in trying to figure what the competitor's price was or would be at a given time and place?

A. In a great majority of times we do that. It is only to determine what the price would be if the mill was a base mill.

8154 Q. Mr. Wing, where you are not meeting prices of others, or selling on the basis of your mill base plus freight, do the freight books help your salesmen to determine your market prices?

A. Yes.

Q. I think you have told Mr. Wooden that your company quotes destination prices?

A. Yes.

Q. And is the destination price or the market price what you are most interested in?

A. What difference is there, in your mind?

Q. There is no difference. I mean, do you think of the destination price and the market price as being the same thing?

A. Yes.

Q. And does your organization know most of the market prices at which sales have been made?

A. They should know them all.

Q. That is, where you do business?

A. Where we do business.

Q. You said you know most of the market prices?

8155 A. Yes.

Q. I am trying to make it clear on the record how you know those; whether you have to go figuring them back each time or whether you knew them from each sale?

A. We know constantly what the market prices are, the destination prices.

Q. At a given market?

A. At a given market, yes.

Q. Do you have to use the freight books then in every sale?

A. Oh, no.

Q. Mr. Wooden has repeatedly asked you questions about base prices. Do you consider that there is such a thing as a price at the base? Do you make any sales at your base at all?

A. On our base price?

8156 Q. Yes.

A. No.

Q. I mean, is that a price in the sense that you quote to a purchaser a purchase price? Do you consider your base price a price in the sense of selling anything?

A. No.

Q. There was another question that Mr. Wooden asked you. You said that the destination prices of competitors are usually the same as yours. Then I think you said that you do not intentionally quote below the competitors' prices?

A. I believe I said that.

8157 Q. Why do you not do that?

A. We want as much money for our cement as we can get.

Q. Would you feel that you were properly representing the stockholders of your corporation if you sold your product in the market cheaper than someone else was selling the same product?

A. We most certainly would not be doing our job.

Q. These Exhibits 1186-A and B and 1188-A and B, Mr. Wooden asked you how it was that you had prices on there out of your own territory, and you said something about it being because you sold the railroads. Will you please explain that? Why do you go outside of your own territory in selling to railroads?

A. Well, you take on a large railroad system, and the price is made to that railroad based on the lowest mill price on that railroad, or the nearest to it.

Q. Mr. Wooden also asked you if when you went into a competitor's territory—

A. (Interrupting) May I interrupt you a minute?

Q. Certainly.

A. Those prices in Texas also, some of them, give us information as to what the price at the ports in Texas would be based on those mill prices plus the rail freight to the port, and then we can find out what the water transportation on that port is to Panama.

8158 Q. I noticed Michigan is on here also. Do you sell to the railroads for shipment to Michigan?

A. Yes, the New York Central system runs up into Michigan and so does the Pennsylvania, and maybe some others.

Q. Now, Mr. Wooden asked you if when you sell in a competitor's territory, whether you equalize your delivered price with their's, and I think you said yes. Do you mean by that that you meet the competitor's price if you want the business when you say you equalize your price?

A. We have to.

Q. You meet the lowest price if you want the business?

A. Yes, sir.

Q. I notice on this Exhibit 1190-A, Mr. Wing, which is your memorandum to Mr. Smith dated March 19, 1930, with regard to the February 10, 1930, Panama bid, in the second paragraph you say: "I assume that they based

their price by taking the lowest Lehigh Valley base for export." You are then referring to the preceding paragraph as to the Florida Portland Cement Company. Is this an example of your figuring out what a price may be?

A. Yes. So that we will have some basis for calculation for the next bidding.

Q. If you had been consulting the Florida Company about it, would it have been necessary for you to have gone through all of that mental work?

8159 A. No, sir; if they had told us, we would not.

Q. If they had been willing to tell you, you would not have needed to have gone through this work?

A. No.

Cross Examination by Mr. Zimmerman.

Q. Mr. Wing, you were asked by Mr. Wooden concerning the opportunity to withdraw a price lead that might be made by your company if other companies did not follow. Do you recall occasions when such a thing has occurred and what was done?

A. Yes, I recall an instance.

Q. Can you tell us about the facts?

A. We raised some prices down south that were not followed. Literally speaking, they have not been withdrawn, but we are accepting business and quoting on the basis of the price before we made the advance.

Q. That is the practical result?

A. Yes.

Q. If the lead does not work, you have to go ahead and meet competition just the same.

A. Maybe the word "withdraw" is not correct.

8160 If you sent out these notices in advance and it is not followed you cannot sell cement at your higher price, you do not withdraw, you just requote.

Q. Which amounts in effect for all practical purposes, to a withdrawal?

A. Yes.

Examiner Norwood: You abandon the price?

The Witness: That is right.

By Mr. Zimmerman:

Q. That might be fairly termed a lead with a situation where there were lags. Correct?

A. Correct.

Q. That is the general practice and the general happening in the industry, it is not, so far as you know?

A. That is the Penn-Dixie practice.

Q. Whether it be a lead which means an advance or a lead which means a reduction?

A. They usually follow reductions.

Q. And meet the price?

A. Yes.

Redirect Examination by Mr. Wooden.

Q. Mr. Wing, your base price at the mills of your own company, they have substantial advantages in the
8161 territory that are nearby the mills, have they not?

A. Well, maybe from one cent up to quite a few cents per barrel.

Q. Depending upon the distance the next mill has to transport the cement?

A. Yes.

Q. When other mills come into that territory where you have that freight advantage, they meet your delivered price?

A. They do if they want business or sell any.

Q. At any rate, they do not cut below it?

A. Well, there have been cuts in the area made on our business.

Q. That is an exceptional thing, though, isn't it?

A. No, it is not.

Q. Haven't you said that ordinarily the delivered prices are the same?

A. Yes, ordinarily.

Q. That is, ordinarily the mills that come into your territory nearby by your mills do not cut below your delivered price at those points, do they?

8162 The Witness: Ordinarily they meet our price.

By Mr. Wooden:

Q. They make their delivered price the same as yours?

A. Ordinarily.

Q. And ordinarily, when you go into the territory where other mills have the freight advantage, you meet their price there on a delivered basis, do you not?

A. We make the same price in order to get the business.

Q. You consider making a competitive price, making it the same, but not going below the other man at the delivery point, don't you?

A. Absolutely.

8164 Q. What is your present ratio of operation to the capacity of your plant, in percentage?

A. At the present moment?

Q. Oh, not the present moment. Over a recent time; the last few months, say.

A. I cannot answer that. I do not know how they are running. They are scattered all over the country.

Examiner Norwood: Can you give us an estimate of that ratio for the first part of this year, to the present time?

The Witness: My estimate would be based on how we are shipping.

Examiner Norwood: Yes?

The Witness: Oh, around 30%.

By Mr. Wooden:

Q. Thirty per cent capacity?

A. About that.

8165 Q. You do not think it might be to the interests of your stockholders if you reduced your price, even in that territory where you have freight advantage?

A. I do not think it would be to the advantage of our stockholders.

Q. You do not think it would increase the volume of your sales?

A. I do not believe so, because I think competitors

8166 would soon meet that price.

Q. That is what they do now, isn't it?

A. Yes.

Q. But wouldn't you have sufficient advantage in the territory nearby your mills to reduce it so as to keep out some of those distant mills?

A. But if they met our competition, we would not gain anything.

8173 Q. If selling to the Government on a so-called Government destination cost is the equivalent of selling f.o.b. mill, why don't you sell f.o.b. mill, without that Government destination cost, if one is the equivalent of the other?

Mr. Leisure: He asked him why he did not sell the

Government f.o.b. mill on direct examination. Now he is asking the same question again and merely repeating the question I asked on the, and asking him the same point that he has gone over on the direct.

Examiner Norwood: Did the witness say that he did sell them f.o.b. mills?

Mr. Wooden: He said it was the equivalent, on cross examination.

Examiner Norwood: Read the question.

(The question is read).

Examiner Norwood: I think he should answer that question. Objection overruled.

The Witness: I answered that this morning, I thought.

Examiner Norwood: Answer it again.

8174 By Mr. Wooden:

Q. If one is the equivalent of the other, why don't you sell unqualifiedly on an f.o.b. mill basis?

A. If I remember correctly, this morning I said that we wanted to know the point of consumption so that we could be competitive there.

Q. In other words, you define it being competitive, making your delivered price the same as the others?

A. Correct.

Q. That is why you do not sell unqualifiedly on an f.o.b. mill basis?

Recross Examination by Mr. Leisure.

Q. Just one question. Mr. Wooden has suggested that you did not sell f.o.b. mill and then said, "You do sell at your railroads that way." Now, as a matter of fact, when you sell to the railroads that is also a destination price as well as a base price, isn't it?

A. Because there is no freight.

Q. Certainly. So there is no conflict in your answer, is there?

A. No.

8176 New York City, N. Y.
Friday, June 10th, 1938.

8179 Mr. Wooden: Your Honor, at this time, before putting on the first witness, I would like to offer a paper marked for identification 1193-A, B and C, an original leter from Mr. Coogan, of the Alpha Company to the Federal Trade Commission, in July of 1930, enclosing a list of changes in certain base prices and an explanation of the Ironton base change which we had referred to in an exhibit which went in yesterday. I am offering it on the assumption that further identification will be waived. The exhibit to which I refer was Commission's Exhibit No. 1189, and the reference to it appears on page 8109 of the record.

Mr. Leisure: No objection.

(COM. EX. 1193-A, 1193-B and 1193-C was offered and received in evidence.)

8180 EVERETT MACINTYRE, previously duly sworn, resumed the stand and testified further as follows:

Direct Examination by Mr. Wooden.

The witness identified Com. Ex. 1188 A and B as a list of basing point prices which were furnished to him by Mr. Walter Wing, general sales manager of the Pennsylvania Dixie Cement Corporation in his offices on June 29, 1934; Com. Ex. 1188 C and D as a list showing the dates on which the Pennsylvania Dixie Quotations were issued and made effective on those bases. Com. Ex. 1188 C and D were mailed to him by Mr. Wing and received by him on July 6, 1934 "by his letter of July 5, 1934". That is his handwriting at the top of Com. Ex. 1188 A (which) was placed on there by him at the time Mr. Wing handed it to him, and on the second page, which is Com. Ex. 1188 B, he also placed on the sheet his handwriting which was for the most part erased by him immediately upon his return to
8181 Washington, but it is still sufficiently legible for him to recognize as his handwriting.

8182 Examiner Norwood: Is there any objection?

Mr. Leisure: The difficulty I had, your Honor, is

that 1188-A, as we pointed out yesterday, does not seem to have any connection with 1188-B although they are clipped together. Mr. Wing, yesterday, was unable to identify it.

The Witness: They do bear relationship to each other and are the two sheets that were handed to me together by Mr. Wing on the date I have specified, July 29th, 1934.

Mr. Leisure: Mr. MacIntyre; I note that on the back of 1188-A it has your stamp, and it says, "Obtained by Mr. MacIntyre from Mr. Wing," and on the back of the second page, numbered 2, which is 1188-B, is your stamp saying that it came from C. S. Crawford.

The Witness: Mr. Leisure, these are not my stamps. They are stamps placed on the backs of the documents by the clerk who is handling the files of the Federal Trade Commission, and he inadvertenly wrote, in his handwriting, "C. S. Crawford" on 1188-B, and the word "Wing" on 1188-A.

Examiner Norwood: And that was an error, was it?

The Witness: Apparently an error on the part of the clerk at the time he was stamping the exhibits, in 8183 handling the files.

Mr. Leisure: That is, you mean that when you get these papers you do not put the stamp on: the stamp is put on by someone else?

The Witness: I did not put the stamp on. That was a clerical operation and the clerk of course wrote in to the stamp, in his handwriting, the names I have just given you.

Mr. Leisure: Is that the procudure, when you get the papers, you do not personally stamp them, and the names and dates are put on later?

The Witness: That particular type of stamp on the back of these documents was placed on those at the time of the breaking down of the files, during the time of the progress of this case, long after the papers were secured.

Mr. Leisure: I see.

How is it, Mr. MacIntyre, if the stamps are put on as you have said, long after, how do you know, for instance,—this second page does not appear to me to belong to the first page—how do you know that it belongs to the first page, in the absence of any stamp or writing to show you where it belongs?

The Witness: Both sheets carry my handwriting.

Mr. Leisure: But you say the stamp was put on
8184 long afterwards.

The Witness: The stamp; but I am not talking about the stamp, because the stamps do not have anything of my handwriting in them whatever. Both sheets carry notations in my handwriting, as well as that Commission's stamp which was placed on at the time that the documents were originally filed. That clearly establishes in my mind at this time the thought that they are the two sheets that were secured by me together, from Mr. Wing, on July 29th, 1934.

8185 Mr. Leisure: Did you receive them from Mr. Wing personally or selected from his files?

Mr. MacIntyre: Mr. Wing personally handed those to me. On previous occasions, on previous visits to the Penn-Dixie offices, I had discussed the files and secured papers from both Mr. Blaine S. Smith and Mr. Walter Wing. On those occasions, I secured these particular papers from Mr. Wing alone.

Mr. Leisure: Mr. MacIntyre, Mr. Wing said yesterday that he had no recollection of those papers. Do you remember any of the circumstances that caused him to give them to you?

Mr. MacIntyre: Yes, I do, and that is recalled to my mind in a large part by a sealed report that was made up by me at the time of my visit to Mr. Wing, as well as the note which appears on the second page, which is 1188-B. That note, while almost completely erased by me, nevertheless is sufficient to call to my mind what I wrote when I put the note on there, and that was that these particular basing point prices as shown on the lists of these two pages were those used by the Penn-Dixie Cement Corporation just shortly before than in calculating and building up the delivered prices which they filed with the Cement Institute in December, 1933, and the early part
8186 of 1934.

Mr. Leisure: It was then that you asked Mr. Wing to give you these specific papers?

Mr. MacIntyre: I wanted the lists. In fact, I asked him for the list of basing point prices that he had used as a basis for calculating the so-called delivered prices that he had in turn filed with the Institute, and he brought this list out, the two-page list, and that is clearly established in my mind at this time by the note which is almost

erased on the second page, the one about which you have raised a question. There is enough of that note left for me to call to mind what I had written on it.

Mr. Leisure: With this identification, we will withdraw our objection.

(COM. EX 1188-A, B, C and D was offered and received in evidence.)

The witness identified Com. Ex. 1191 A-H inclusive as photostats of documents which were furnished to
8187 him by Mr. Walter Wing and Mr. Blaine S. Smith of the Penn-Dixie Cement Corporation, and it was on the occasion of investigation that he conducted in their offices on July 3, 1931. He made selections from their files of which these are photostatic copies. As he recalls it, the original documents were handed to him and the photostats made by him and the original documents returned to them after comparison with the photostats. Mr. Wing and Mr. Blaine Smith gave him certain files and he made certain selections.

Mr. Wooden: I offer those papers.

8188 Mr. Leisure: Your Honor, as to some of these, I do not know whether your Honor will feel that they are sufficiently identified, merely because they came from the files. It may be that we will not object to them, but there should be some offer, it seems to me. I do not know what they intend to prove. They do not appear, just on the face of the documents, to be relevant or material.

Mr. Wooden: They will show the results of bidding on the Illinois State Highway business, and a comparison of the Penn-Dixie bids with other bids, showing whether others were above or below, and how much, and some comment or analysis of the results of the bidding.

Examiner Norwood: Does it show how this was used, and who made it up?

Mr. Wooden: The only showing is that these papers were in the files of the Penn Dixie Company and were provided to Mr. MacIntyre by officials of that company.

Examiner Norwood: Is it connected up with certain biddings?

Mr. Wooden: Yes, it relates to the biddings on the Illinois Highway Commission's business. That one sheet there is a comment upon the figures, that can be
8189 checked with figures in the other papers.

Mr. Leisure: I am going to object to it, your

Honor, until it is connected up with the respondents in some way or some explanation is made, as to who made them. I do not see, from what they are, that they are binding on the respondents.

Examiner Norwood: It was in the file of one of the respondents?

8190 Examiner Norwood: I shall overrule the objection and receive it subject to its connection being apparent from the record.

Mr. Zimmerman: As you have ruled, I do not think there is anything to be said now.

Examiner Norwood: Go ahead.

Mr. Zimmerman: I did want to suggest that it seemed to me that the important question was what, if any, relationship is there between these documents and any conspiracy charged in the complaint, or any unfair method of competition, and I thought it would be a fair question to ask Mr. Wooden to state that. If there is a connection, that is the point that is primarily essential.

Mr. Wooden: The papers show, your Honor, a considerable amount of identical bidding on the State business, and some comments or analysis of that bidding, and, as a matter of fact, the expressions used are very similar to the expressions used by Mr. Wing when he was on the stand yesterday, about these competitive bids. All

8191 those things are circumstances tending to prove what the results of the bidding was and how the respondent Penn-Dixie reacted to that bidding.

Mr. Zimmerman: It seems to me that counsel has completely failed to state that the documents show anything in relation to any conspiracy or any unfair method of competition. If he cannot do it, I do not know how he can expect the Examiner to do it, because counsel has certainly studied this with a view to trying to prove those points. I do not think these papers are material or relevant.

Examiner Norwood: I think the relevancy of the paper is clear. It will be received.

(COM. EX. 1191-A to H, inclusive, was offered and received in evidence.)

Q. I show you papers marked for identification 1190-B and D. What are they?

A. The papers marked for identification 1190-B and D are photostats of documents which I selected from the files

of the Pennsylvania-Dixie Cement Corporation during July of 1931, and which were furnished to me by M. Walter Wing and Mr. Blaine Smith, officials of that com-
8192 pany on July 3rd, 1931.

Mr. Wooden: They are part of the papers which Mr. Wing was shown yesterday and failed to identify those particular ones. I offer them at this time to complete the exhibit.

Examiner Norwood: Does counsel have any further objections to those they stated yesterday?

8193 Mr. Leisure: Your Honor, we object to the documents. 1190-D appears to be a letter to the Pennsylvania-Dixie Company dated October 11, 1930 from a Mr. A. L. Flint of the Purchasing Department of the Government. I don't know of any rule of law which allows Mr. Flint to offer his testimony in this proceeding without appearing on the witness stand and being sworn. We are deprived of any possibility of cross examining him as to whether his statements are correct or not, and I object to that document for that reason.

As to 1190-B, there is nothing to show what it is, and it has not been identified in any way but merely that it came from the files of the corporation.

Mr. Wooden: It shows on its face what it purports to be. It contains the names of parties who are members of the organization of the Penn-Dixie, and the letter from the purchasing agent of the Panama Canal or whoever that party may be, is a part of the transaction on which this Penn-Dixie Company submits bids.

Mr. Leisure: There is no showing as to who made it up or its correctness or how it came in the files.

Mr. Zimmerman: I should like to state an objection that the documents are not shown to be competent
8194 nor revelant nor material to any issue, that from the date of them they are too remote to be in any wise related to the issues and the power of the Commission to enter any present relief, and that they are in no wise connected with the respondent Marquette Cement Manufacturing Company.

Examiner Norwood: I think as far as that letter of Mr. A. L. Flint is concerned, it is part of the transaction. There are no statements made in there except as to what constitutes his official action in the matter of these bids.

Mr. Wooden: Mr. Wing testified yesterday, your

Honor, that he relied upon information as to the last bids submitted in making his next bids on the Panama Canal business.

Examiner Norwood: But how is this second sheet tied up with the Flint letter?

Mr. Wooden: I am not sure that the two are related. As a matter of fact, I think they are a subsequent bid, but I think the letter relates to one that was among those that Mr. Wing yesterday, if I am not mistaken, identified rather than 1190-B. This is B and D and there is one in between them.

Examiner Norwood: Are you going to connect these up with this entire transaction?

8195 Mr. Wooden: I offered that as a part of a single transaction not between those two papers as such, but between other papers and the letter to which it relates.

(COM. EX. 1190-B and D was offered and received in evidence.)

Q. Mr. MacIntyre, what are the papers marked Exhibits 1194-A and B and 1195-A and B?

A. The papers marked for identification as 1194-A and B and 1195-A and B are photostats of documents which were furnished me by Mr. Joseph Young and Mr. John Bowen, officials of the Lehigh Portland Cement Company, on September 2, 1931 after I had selected the originals from which these photostats were made from their files during an investigation I made at that time in their offices.

Mr. Wooden: I offer them.

Mr. Leisure: It is not apparent from a reading of the documents how they are material, your Honor. I would like to know what, if any, issues they bear upon.

Mr. Wooden: The first one, your Honor, the letter from Mr. Young to Mr. Keller giving the basing point price changes and making a statement that the trade

8196 discount had been eliminated by all of the eastern companies. That ties up with a similar expression in the Lone Star files of a similar action in the Middle West about the same time.

Mr. Zimmerman: How does it connect up in any way with the Institute or charges of conspiracy made here to do an illegal act or any unfair method of competition? I don't think counsel has pointed that out.

Examiner Norwood: That is a large question that has to be worked out from the mass of evidence.

Mr. Zimmerman: It becomes ever larger and ever muddier when you allow things to go in by wholesale without any showing of any connection, and there is not any.

Examiner Norwood: I do not think that can appear in toto from each and every bit of evidence that is presented.

Mr. Zimmerman: Of course, our view is that it will never appear and has not and never will. There also appears to be no connection between this document and certainly the respondent Marquette for whom I speak; and the date of it is entirely too remote to be applicable to any present remedial relief that could be granted by the
8197 Commission. It is observed that it is dated back in the early part of 1931.

(COM. EX. 1194-A and B and 1195-A and B were offered and received in evidence.)

Mr. Wooden: That is all.

Examiner Norwood: Do you wish to ask any questions of Mr. MacIntyre?

Mr. Leisure: No.

Mr. Zimmerman: I have none.

8198 JAMES H. ACKERMAN, recalled, having previously been duly sworn, testified further as follows:

Direct Examination by Mr. Wooden.

Q. Mr. Ackerman, with further reference to your new base price at your Rockland mill, was that confined in a restricted area or was it allowed to make that delivered price wherever it would?

A. Permitted to make the delivered price wherever it would.

Q. You did not consider it in any sense an arbitrary zone price?

A. Oh, no.

Q. Did you give any advance information to any of your competitors, about your contemplated establishment of that base price?

A. No, sir.

Q. How much does the new price there change the price and in what territory?

A. Our prices were changed in substantially seventy to eighty towns, cities or villages in Maine. It had the effect of putting a ceiling on our mill net return of two dollars. In other words, wherever the $2.00 base price plus freight made a lower destination price than that which we had quoted heretofore, it became effective.

8199 Q. How much of a reduction was that, compared to what the previous ceiling had been?

A. I cannot answer that question without you letting me know at that destination you have in mind.

Q. At the mill. How much difference in the price at the mill?

A. I don't think we have a price at the mill, Mr. Wooden. What do you mean by "at the mill?"

Q. You had a mill net there before, didn't you?

A. We have a mill net on every shipment that we make.

Q. Yes. I am trying to get a comparison between your mill net there before you made this change, and what it has been since.

A. On the good part of our business there will be no change.

Q. How large a part?

A. I would estimate on approximately eighty per cent, no change.

Mr. Leisure: That is not clear. Is that by volume that you are inquiring, Mr. Wooden?

Mr. Wooden: Let the witness state that.

The Witness: I mean by volume.

By Mr. Wooden:

Q. And on the remaining twenty per cent the ex-

8200 tent of the change was how much?

A. Do you want an average figure?

Q. Yes, or—

A. (Interrupting): That is about all I can give you.

Q. All right.

A. I would estimate five cents a barrel.

Q. Reduction?

A. Yes, sir.

Q. Did your competitive mills meet your price?

A. As far as I know, I know of some cases where they have.

Q. How much of a reduction did you make in your maximum mill net?

The Witness: Can I have a piece of paper, and I will try to figure it out for you?

(A sheet of paper is handed to the witness, who makes computation.)

A. I would say the maximum was about 31 cent s a barrel, that would be in the city of Rockland, Maine.

Q. Your maximum price, then, before the change was $2.31?

A. What do you mean by "maximum price?"

Q. The maximum mill net realization.

A. That is the way I figure it.

Q. I show you now, Mr. Ackerman, Exhibit 10-B which contains a tabulation of bids to the State of Virginia
8201 in June of 1937, including your company among them, directing your attention to the delivery point of Martinsville, Virginia, right here (indicating).

A. Yes.

Q. Will you note there that your company was among seven others who each bid $2.43 at that point?

A. I note that this photostatic sheet indicates that our company quoted at price of $2.43 at Martinsville, Virginia.

8202 Q. And that there were six others who also quoted that?

A. I don't know about that.

Q. Well, it is right there in front of you.

A. Well, the sheet may soy so, but that does not necessarily say they quoted it.

Q. I am calling your attention to what the sheet shows. Do you also check with me that there were seven others who quoted at Martinsville $2.42?

A. There is a bunch of them here on the sheet at $2.42.

Mr. Leisure: I think the document speaks for itself. I think we are wasting time on this.

Examiner Norwood: I think it does.

Mr. Wooden: I wanted to ask him a question about it, and I am directing his attention to what is on the sheet.

Examiner Norwood: All right, go ahead.

By Mr. Wooden:

Q. Can you explain why your company should bid one cent higher along with six others while seven others bid one cent lower than the seven in which your company was included?

A. Well, of course I cannot speak for what somebody

else did, Mr. Wooden, but the only thing that I can figure is that we did not figure the lowest possible combination.

Q. In other words, you did not intentionally bid 8203 high there?

A. Not in that instance, no, sir.

Q. There are some instances in which you do intentionally bid high?

A. Well, there have been cases where we have quoted a price which may have been higher than the market, in other words, we may have limited our realization to a certain figure.

Q. Now, referring to Exhibit 155-A to E, inclusive, is that your bid to the State of Virginia in June, 1937?

A. (Examining): It looks like it.

Q. Does it carry your signature?

A. A photostatic copy of it, yes, sir.

Q. Now, I note in a number of cases there you marked out figures, and there appears the words "no bid".

A. Yes.

Q. Is that your marking?

A. Yes and no. I cannot explain it for you.

Q. All right; that is what I want.

A. This bid was made up by a clerk in our employ and he was told to eliminate any destination on this bid where our net return was below a certain figure. He wrote opposite here "no bid", and gave them to the girls to retype, and in some manner the one that he marked up "no bid" went off and the one that should have gone never went.

8204 Q. You marked "no bid" at some points where the delivered price was higher than at other points where you did bid?

A. It was not a question of the delivered price in mind; it was a question of being satisfied with the return at destinations in Virginia; in other words, we limited our bids to certain points.

Q. And being satisfied with the return, you mean satisfied with the mill net?

A. We were willing to accept business from the Virginia State Highway Department at the points for which we submitted the bids. We did not care for business at the points where we marked "no bid".

Q. And the thing that determined that you were satisfied was whether it went below or above this minimum mill net which you had in mind at the time?

A. I would say so, yes; exactly.

Q. You would have gotten a higher delivered price at some of the points where you did not bid; that is a fact, isn't it?

A. I cannot say that. The record will show that, but I am not interested when I am considering mill net return, what the delivered price may be.

Q. That is the only thing that you have to go on to get your cost and a profit out of it?

A. Our mill net return determines the profit or
8205 the loss as the case may be.

Q. One more question, Mr. Ackerman, about this Rockland base price. What announcement did you make about the change?

A. We sent a quotation to every customer with whom we did business or every prospect that we had, advising them of our new price at that destination.

Q. Was that effective immediately or on a certain number of days notice?

A. It being a reduction, it was effective immediately and retroactive five days on five days previous shipments.

Q. You sent this only into the territory where the price change was effective, I take it?

A. Yes, sir.

Q. Has your mill in the Lehigh Valley or either of your mills ever participated in any arrangement with competitors whereby there was any allocation of the business of the various mills?

A. None whatsoever.

8206 Q. When you were here, Mr. Ackerman, I asked you if you would supply certain statistical data. Have you reached a conclusion about that yet?

A. I turned over some of that data to our counsel.

Q. Is there some of it that you have not yet prepared?

Mr. Leisure: I haven't it here at the moment, but I will have it here at noon, if that is satisfactory.

Mr. Wooden: Very well.

By Mr. Wooden:

Q. Is there some of it that you have not yet prepared?

A. It was all prepared.

Q. And all turned over to counsel?

A. Yes, sir.

8207 *Cross-Examination by Mr. Leisure.*

Q. Mr. Ackerman, I believe you said that your company has two mills?

A. Yes, sir.

Q. I think you said one was located in Pennsylvania and the other in Maine?

A. Yes.

Q. And did you say the mill in Pennsylvania was a base or not a base mill?

A. The mill in Pennsylvania is a base mill.

Q. How old did you say it was, the Pennsylvania mill?

A. I think the mill was built in about 1886. I think it started to produce Portland cement in 1889.

8208 Q. As I understand it, your former policy, as far as the Maine mill was concerned, was to meet the lowest price at each point where you did business; that is, you were a non-base mill?

A. Yes, sir.

Q. Does that mean, Mr. Ackerman, that as a non-base mill you sell at the market price wherever you find it?

A. Yes, sir.

Q. If you want the business, of course?

A. Yes, sir.

Q. What percentage of your annual production do you sell in Maine, from the Maine mill?

A. I would say it was about fifty per cent, over the last ten years.

Q. And where did you sell the other fifty per cent?

A. New Hampshire, Vermont, Eastern Massachusetts and Rhode Island.

Q. Do other manufacturers sell in Maine?

A. Yes, sir; there are a number that do.

Q. About how many?

A. Well, six or eight manufacturers regularly solicit business in Maine, and there are others, that have old established accounts that still stick with their houses.

8209 Q. As to the markets in Maine, are there any large centers of consumption in the territory that your Maine mill serves?

A. I wouldn't call them large centers; no, sir.

Q. Are they substantial market centers?

A. There are some.

Q. What are they, in Maine?

A. Portland is the biggest city; Bangor, Augusta.

Q. And outside of Maine, what other large centers of consumption are there that your Maine mille serves?

A. Boston and Vicinity; Metropolitan Boston is the biggest market. There are Providence, Fall River, New Bedford, Worcester, Springfield, Portsmouth in New Hampshire.

Q. And approximately how much of your production of your Maine mill is shipped to these places?

A. About fifty per cent, eliminating Portland.

8210 Q. Do you know what the production was of your Maine mill last year, in 1937?

A. We manufactured and sold about 400,000 barrels.

Q. And what would be its average production, say over a period of say ten years?

A. 500,000, 600,000 for the last ten years.

Q. And the Maine mill has been operating about how long, did you say?

A. I think we started about in 1928.

Q. Have you got any figures, or do you know what would be the amount for any one year that that mill produced?

A. One year we made over one million barrels.

Q. How much over? Do you mean by that approximately one million barrels?

A. Between one million and one, one hundred thousand; somewhere along there.

Q. On what basis have you figured your prices at these larger places of consumption?

A. Well, we have met the competitive price, Mr. Leisure, as they existed.

Q. And were those prices, special prices of any kind?

A. From my viewpoint, the majority of New England is composed of special prices.

Q. You mean by that, they are specially low prices? I mean, they cannot be figured on any known base

8211 plus freight?

A. What has been termed, or what we often term, as arbitrary prices.

Q. How does the amount which you realized at your Maine mill, compare with your cost of production?

A. Well, on an average, what we get for cement is less than what it costs us to make it. That mill is operated up there for ten years, and with the exception of two years we have lost money.

Q. In what amount?

A. Well, I would say it was over $1,000,000 in the ten-year period.

Q. Is the cost of production in Maine any higher than the cost of production in Pennsylvania?

A. Yes, sir, it is a good deal higher in Maine.

Q. How are those factors made up, do you know?

A. Well, there a good many reasons for it, Mr. Leisure. One is that coal is the principal commodity used in the manufacture of cement. It takes about a hundred pounds of coal to burn a barrel of cement. Every additional dollar per ton cost in coal means an additional cost in manufacture of five cents a barrel. Coal for our Pennsylvania plant and coal for our Maine plant comes from the same fields, West Virginia or Western Pennsylvania, and the cost of transportation of coal to Maine is a great deal
8212 more than it is from Pennsylvania or West Virginia to our plant in Pennsylvania.

Q. How do your labor costs compare?

A. Well, labor in Maine is a funny thing. As a matter of fact, you pay probably a lower scale in Maine than you do in Pennsylvania but you have got a different type of individual to deal with. Rockland is essentially a fishing community or farming community. It takes a long while to train a man to be a good operator in a cement plant, and I do not think that the natives up there are what you might call cement men. They are not used to factories, they are not used to factory work, and they will stay for a while and then leave and go back to their old game. Our labor turnover in Maine is very high.

Q. You consider it higher than your Pennsylvania plant?

A. Yes, there is a turnover there and we are not able to give them continuous production and continuous work. Another reason our costs are higher up there is that the stone, which is basic or one of the basic raw materials used in the manufacture of cement, is flint-like, it is like granite. That area up there is the old granite territory. It is not a rottenstone like we have as we go further south.

Q. You mean by that it is harder to drill?

A. Harder to drill.

8213 Q. And crush?

A. More expensive dyna[illegible]ing, more expensive drilling and much more difficult to crush.

Q. Does the Maine mill run at as high a percentage as the mill at Pennsylvania?

A. No, it does not, I am sorry to say. If we got all the business there was in the State of Maine, I don't believe that we could operate that plant at more than 35 or possibly 40 per cent of capacity. You take New England generally, in my opinion, the situation there is a lot different than it is in this area. New England, generally speaking, was a textile section, and since many of the cotton mills and woolen mills and so forth have gone south, they are feeling the depression up there to a much greater extent than they are down in this neck of the woods.

Q. And does that rate of operation affect your cost?

A. Oh, my, yes.

Q. Now, in response to one of Mr. Wooden's questions, you said that the difference between the freight from Hudson to Rockland and the freight from Thomaston to Rockland was not reflected in the net amount realized at your mill, but was in addition to the mill net. When you used that term "mill net", did you refer to the amount realized after deducting freight charges from Thomaston to Rockland?

A. Well, that is what I mean by "mill net".

8214 Q. Before the base at Maine was established, what was the price at which you sold cement at Rockland?

A. I estimated, in my previous testimony, as I recall it, that the freight from Hudson to Rockland was 75 cents a barrel. That would mean that prior to the establishment of our price base at Rockland, we sold cement in the City of Rockland at an estimated figure of $1.75 plus 75 cents, which is $2.50, and if we talk about cloth sacks, $2.90 delivered in Rockland.

Q. That was previously?

A. That was previously.

Q. What was your mill net then?

A. Twenty cents a barrel, roughly, I estimated, as the freight from the mill to the City of Rockland. Subtract that and 40 cents for sacks, which would be 60 cents from $2.90 and you get $2.30.

Q. And what is your price in Rockland now?

A. Well, our price in Rockland, using the same illustration that I used, would be $2.20 without sacks; in other words; $2.00 price base plus 20 cents a barrel freight. As a matter of actual fact the freight is 19 cents; that accounts

for the one cent difference that I spoke to you about this morning, in answer to your question.

8215 Q. So your net at Rockland now is what?

A. Our net at Rockland today is $2.00. Establishing the base of $2.00 put a ceiling on our mill net of $2.00. In other words, we cannot get more than $2.00 a barrel for cement and be in competition.

Mr. Zimmerman: You mean mill net, of course?

The Witness: I mean mill net.

8216 Q. Is Rockland a substantial market for your mill?

A. No, sir.

Q. What is the nearest substantial market.

A. The nearest substantial markets in Maine are the three biggest cities, Portland, Bangor and Augusta.

Q. And the closest one would be how far away?

A. I think it is about ninety miles.

Q. Which one is that?

A. I think they are all about ninety miles railwise. By air, Bangor would probably be thirty miles, but we are at the terminus of a railroad, and the railroad goes down to Brunswick before it can go on to Bangor.

8217 Q. And to those three substantial markets in Maine that you have just described, about how much of your cement do you sell them in a year?

A. I guess last year we sold approximately 60,000 barrels to the three of them combined.

Q. How far is it to a substantial market outside of the State of Maine?

A. Well, Boston is the big market.

Q. About how far is that?

A. About 200 miles, 194 or— call it 200 miles.

Q. Is the freight rate from your Thomaston Mill to Boston less than the freight rate from Hudson to Boston?

A. No, sir.

Q. How do they compare?

A. I think they are exactly the same. I think it is approximately 200 miles from Hudson to Boston.

Q. What other substantial markets does your Maine mill serve?

A. Well, I think I said Portsmouth, Providence, the Twin Cities of Fall River and New Bedford, and inland from the Coast.

8218 Q. What about Springfield; is that one of them?

A. Well, Springfield is one of them, yes. It is a good sized city.

Q. And are they still farther in distance from your mill than Boston?

A. Oh, yes.

Q. How does the freight rate from the Maine mill to these places compare with the freight rate from Hudson to those places?

A. Our freight rate is much higher th the freight rate from Hudson.

Q. Then from what you have said, are your markets located closer to your mill or are they at some distance from your mill?

A. Our principal markets are at some distance from our mill, Mr. Leisure.

Q. On direct examination, I understood you to say that on May 11th you sent out new price quotations to certain destinations which were figured on a base at your mill amounting to $2 without sacks, is that correct?

A. Yes, sir.

Q. Had your company decided to send out these new prices figured on the base at your mill prior to the time that you were subpoenaed in this case?

A. Yes, sir, we decided that some time prior to
8219 the time I was subpoenaed.

Q. I think you said that one of the factors which led to a change in your price policy related to imported cement?

A. Yes, sir.

Q. Will you explain that, please?

A. There was a large operation contemplated at a point called Mattawankaeg, which involved 105,000 barrels of cement, which is a very sizeable order. We solicited that job actively for several months. I think the job first came out some time in November of last year. During the course of our solicitation, I followed the job personal myself a good many times and went to Boston about it. During the course of our negotiations with the buyer, we learned that foreign cement was very much a competitor, in fact, to my certain knowledge there were five carloads of imported cement purchased by this buyer. We did not want to lose that order, and more than that, we did not want foreign cement to get established in Maine. We realized that if

we were going to compete, or, rather, we realized that if we were going to be in a position to compete, we would have to do something, to meet the price at which foreign cement was being offered. The Maine Central Railroad established a special rate from Rockland to Mattawankaeg and we put in our price base, and the result was a lower price at destination, enabling us to compete
8820 with foreign.

Q. And you got the business?

A. In the final windup, we got the business.

Q. What did you say the name of that Dam was?

A. Mattawankaeg.

Q. And you said this morning that the effect of that was to change your prices in 70 or more places?

A. Yes, sir.

Q. You have just said that you put in a base when you quoted on this Dam. What effect, if any, did that have on your other prices?

A. Well, it changed, it lowered our prices at many destinations. I estimated approximately 70.

Q. What I had in mind was the prices around Rockland; between Rockland and the Dam, for instance.

A. They all went down.

Q. Was this price which you made at the Dam a special price for that particular project?

A. No, sir.

Q. From what you have said, it became a general price?

A. Anybody at Mattawankaeg can get our cement at the same figure as anybody else provided they are buyers of the same class.

Q. Prior to that time, Mr. Ackerman, before this Dam incident came up, had you ever considered putting
8221 in a base in Maine?

A. Yes, sir; we are constantly considering, or we were constantly considering putting in a base. I think I testified that we were losing money at that plant and had been for eight of the ten years we operated, and we were giving consideration to anything and everything that we could do to make it a profitable operation. Among those considerations was the establishment of a base.

8222 Q. On direct examination you testified that some of your salesmen used freight rate books. Mr. Wooden asked you whether your company makes good use of

the freight rate books and you replied that it does. Do you recall being asked about the freight rate books?

A. I remember that.

Q. What use does your company make of them?

A. Well, they are very helpful to our traffic department, especially in Maine. Before Rockland was a headline point in the freight rate books we had a traffic manager and two assistants, and he was a pretty high priced man, figuring the rates for us. Today the traffic department uses the freight rate books and we no longer have our high priced traffic manager or his two assistants. The shipping in the traffic department today is run by one clerk.

Q. Mr. Wooden suggested to you early in the examination that you had a freight profit. Would you consider that if your labor were cheaper in Maine that you had a labor profit?

A. No, sir.

Q. Suppose your real estate taxes were less in Maine than they were in Pennsylvania, would you consider that you had a real estate profit?

A. No, sir.

8223 Q. Comparing your fifty year old mill in Pennsylvania, which is the oldest in the country, I think you said, with your modern ten year old mill in Maine, which is today, and has been, the more profitable?

A. Our Pennsylvania mill, without any question.

Direct Examination by Mr. Wooden.

8225 Q. What has been your rate of operation at the Lehigh Valley Mill in recent years, the last couple of years, say?

A. The last couple of years, I would say we operate at the Valley forty per cent.

Q. And last year?

A. I would say—about last year—I understood you to ask me the last two years.

Q. I did; but that applies also to the last year?

A. I think so.

Q. And in Maine, how much?

8226 A. We operated in Maine last year, I estimate it at 400,000 barrels, and we are capable of producing 1,200,000; that would be about 33%.

Q. That would cause your cost to be higher at the Maine mill, would it not?

A. Yes, sir.

Q. I understand your capacity at the Maine mill is sufficient to supply the entire requirements of the State of Maine for cement?

A. Yes, sir.

Q. And then some?

A. And then some.

Q. Enough to supply the entire requirements of Maine and New Hampshire?

A. Well now, you have got to specify what year you refer to, or what period of years you refer to. Remember, the production is constant, the production at the mill is constant, and the consumption may vary.

Q. Well, last year, say?

A. Oh, last year there was about 400,000 barrels of cement, as a total of cement in the State of Maine, and in New Hampshire I would estimate 300,000 barrels. That would be about 700,000 barrels, as against a capacity of 1,200,000.

Q. How about adding Vermont to that?

A. You are getting pretty far away, in Vermont.

8227 Q. You don't get into Vermont very much?

A. Not very much.

Q. Is the total cost of production at your Maine mill higher than the Lehigh Valley?

A. Yes, sir.

Q. How much?

A. Well, I would estimate fifteen to twenty cents a barrel.

Q. What is the total cost per barrel at the mill?

A. I don't know. That is a variable; all kinds of things enter into it.

Q. Yes, but you have given us the relative costs, the amount of the difference between the costs, and I cannot develop the facts regarding it without knowing what your cost was at each mill.

A. Well, I don't know them as such. I estimated before that it costs more money to produce cement at Maine than it does at Pennsylvania, and I gave you the reasons.

Q. Yes?

A. It is ten cents a barrel on coal alone.

Q. And you said fifteen—

A. (Interrupting) I estimate between fifteen and twenty cents. Now you have got your labor and grinding costs that are quite obvious, and you have got a larger shutdown period of one plan that you have at an-
8228 other. I value those at about fifteen to twenty cents a barrel.

Q. As an official, and sales manager of your company, can't you tell what your average cost at those two mills is?

Mr. Leisure: I do not think the witness ought to be scolded. He has been very fair about it. He is not an official of his company.

Examiner Norwood: He has stated that he cannot, hasn't he?

The Witness: I stated I do not know.

Mr. Leisure: He has been very fair about it.

By Mr. Wooden:

Q. Are you unwilling to disclose such figures, Mr. Ackerman?

A. I do not know the figures; therefore I cannot give them to you.

Q. And you haven't any approximation of them in your mind?

A. No, sir; I have not.

Q. Not for any period of time whatever?

A. I am afraid that is true.

Q. You don't know what your costs are at either of your mills at the present time or over the period of last year?

A. I know we are in the red.

Q. What they are for the last year?

A. I have not looked at the sheet in a long time.

8229 Q. With those differences in cost in mind at your two mills, and the disadvantages of your Maine mill, why did you put in the Maine mill?

A. I would be very glad to answer that question. That was back in the good old days, when there was such a thing as protective tariffs, and there was such a thing as a good volume of business. On paper it looked like a pretty profitable proposition.

Q. Even at the extra cost involved?

A. Yes, sir. Remember, your markets, your principal markets, reached by that plant, are now filled with foreign cement, and your prices are such that it is virtually impossible to make a profit.

Q. Did you ever have a demand for the product of your Maine mill that took its entire capacity?

A. One year we sold its entire output.

Q. Generally speaking, it has been much below capacity?

A. Very much so.

Q. You counted on the favorable conditions at the time continuing indefinitely, I suppose, when you built the mill there?

A. We didn't think they would be what they turned out to be.

Q. You expected, however, that the conditions that existed at the time would continue in operation long
8230 enough to justify the erection of your mill there?

A. Yes, sir.

8231 Q. You spoke of the special arbitrary prices applying in New England. I take it that those do not apply over a majority of the area but as to the volume of business. Is that what you had in mind?

A. That is the idea. Not the area, but where cement is used.

Q. As to area, it is a comparatively small area that the arbitraries apply in, and a comparatively large area where the regular prices apply?

A. I would say yes, sir.

Q. The Lehigh Valley mills and the Hudson Valley mills, were they selling in your territory of your Maine mill at the time you established it?

A. Yes, sir.

Q. You had it in mind, I take it, at the time of the establishment, to meet their delivered prices by adding the freight from the Hudson Valley or Lehigh Valley as the case might be?

A. I cannot say that we had that in mind. We accepted their prices when we first started to do business and studied the question carefully as we proceeded.

Q. Would you now say that looking over the record of your Maine mill, that it turned out to be an unwise investment?

A. Well, if we have got to stop at 1938, very defi-
8232 nitely it will have proved to have been an unwise investment. I have hopes for the future.

Mr. Wooden: Mr. Paulson wants to ask Mr. Ackerman a few questions.

Redirect Examination by Mr. Paulson.

Q. How large a traffic department does your company have?

A. Today?

Q. Today.

A. We have one clerk at each mill that handles traffic matters for us.

Q. Can you explain very briefly the nature of his work or their respective duties?

A. They prepare the bills of lading, communicate with the pack house as the orders come is as to what should be loaded, keep records of incoming and outgoing cars of all kinds, deliver the bills of lading for the cars that go out of the plant to the freight agent of the local freight station.

8233 Q. Is it necessary in the cement business to check over your bills of lading to see whether you have been charged the proper freight by the railroad?

A. I cannot speak for the industry. I believe that our company at the end of every year sends all of its bills of lading to a traffic bureau of some kind that checks them all over and we go fifty-fifty on what they may recover. I think it is called the Merca.

Q. You do not rely then on the rates in the freight rate books at all so far as the actual amount of the freight is concerned?

A. Well, these fellows operating in the traffic department do not look up the rate to the same station every time over and over again. By and by they have them in their minds, but they have a short list that shows that—what is straight Maine Central delivery and routed Maine Central.

Q. When you say "these men", I don't know whether you talk about the bureaus to have you subscribe—

A. (Interrupting) No, I am talking about these two men that operate in our traffic department at each plant.

Q. How much do you pay for that service?

A. What service?

Q. Sending those bills of lading in to the auditors.

A. We do not pay anything for it. We go fifty-fifty on what they may recover.

8234 Q. What bureau is it that does that?

A. I think it is the Merca. I think they call themselves the Merca Traffic Watching Service.

Q. And it is through them that you protect yourself against any loss which might come to you through overcharging by the railroad? That is the way you protect yourself against such loss?

A. Well, I think their work has to do principally with incoming shipments more than outgoing shipments, because I think the cement rates are pretty well standardized.

Q. But they do check both of them?

A. I understand so.

Q. You said that at one time you had two traffic men, I believe, who were high-priced men. Was it necessary to have them because you had to ascertain the destination price in order to be able to get in to compete, as you put it? Is that why you had to have those men, or did you want me to understand and his Honor to understand that it took two traffic men and I believe a clerk or someone like that full time to figure out the rates from your mill to the destinations that you served? Just what were these men for?

A. What question do you want me to answer, Mr. Paulson?

Q. Well, if it is not clear—

A. (Interrupting) Shall I try to clear it up?

8235 Examiner Norwood: Do you wish the question read?

By Mr. Paulson:

Q. I will state this question. I will ask you first if you were with the company when you had these various traffic men?

A. Yes, sir.

Q. Were you familiar with their activities?

A. I was very familiar with the traffic manager we employed at Rockland.

Q. Did you have one at each plant?

A. We had a so-called traffic manager at Pennsylvania.

Q. How much did you pay him?

Mr. Leisure: I think that is immaterial, your Honor.

Mr. Paulson: I withdraw the question.

Q. Did you go down to the office where he was working in the course of your duties?

A. The man in Maine?

Q. Yes.

A. Yes, sir.

Q. Just briefly, what was he doing; what was his work?

A. Bear this in mind. There were no cement rates in effect when the plant was being built. The railroad was to issue tariffs on cement from Rockland to wherever we might ship. It was that man's job to work out
8236 with the railroads, freight rates which seemed just and equitable in view of the rate schedules from other producing areas.

Q. So that there was not any chance for the Institute to publish books to help you in that situation, was there?

A. That is right.

Q. And the Institute service did not render you any assistance and could not have rendered you any assistance under the circumstances?

A. Have you ever tried to read a cement tariff?

Q. I am asking you if under those circumstances—you had those traffic men while you were setting your plant up?

A. That is right.

Q. And when that was done, you had them on file cards and had them tabulated; you knew what they were after that, is that right?

A. The tariffs or rates, rather, were available in some 27 different tariffs.

Q. But after these men that you had employed when you started up your plant worked for a year, you certainly had a record which was intimate to yourselves, and you had collected together the rates—

A. (Interrupting) We never prepared a freight rate book, if that is what you had in mind, and the freight rate book of the Institute is an alphabetical simple proposition for us to follow.

8243 THOMAS J. HARTE, the witness for the Commission, is recalled and, resuming the stand, testified further as follows:

Direct Examintion (Continued) by Mr. Wooden.

Q. Mr. Harte, did you check with regard to Exhibit 316-E and F for identification?

A. Yes, I did, Mr. Wooden:

Q. And what did you find?

A. I found this original, and I must say we had a hard time finding it. It was not in our sales department.

I located it in our statistical department. It is evidently a list that was made up, and it is undated, and there is no signature on it of who prepared it, but I know what department it came from. The best that we can learn out of it is that the price was made the early part of 1937, and this clerk went back on our 1936 shipments for the first nine months, to see what our loss in dollars would be, or how much less money we would obtain, had we
8244 shipped the 1936 cement on the 1937 price.

Q. And that is what that compilation is?

A. Yes, sir.

Mr. Wooden: I will offer that, 316-E and F, in evidence.

The Witness: Were they listed as two papers, Mr. Wooden? Mr. Leake seemed to think they were two papers, and I considered them as one.

Mr. Wooden: There are two sheets.

Mr. Leake: You stated the other day that it might have been one of your competitors' figures that might have gotten into the file.

The Witness: I read the transcript on that, and I do not think it is quite clear. What I meant the other day when I included some competitors, I meant that these papers—while I was unwilling the other day to identify them—might have got into the Commission's files and come from a competitor of ours. That is what I meant by the expression, but the transcript does not read that way and it might have been misinterpreted.

8245 Q. You are now satisfied that they came from your files?

A. Yes.

Mr. Leake: On page 8052 of the record, there should be a correction consisting of the change of the name of Long to Lawlor, regarding one of the exhibits which was offered. It is the first line on page 8052.

Examiner Norwood: Let the record show the correction. Is there any objection to that proffer?

Mr. Leisure: No objection.

(COM. EX. 316-E and F was offered and received in evidence.)

The witness identified Com. Ex. 311 D as an announcement of withdrawal of stocks at Brooklyn, N. Y., dated December 2, 1935, effective December 7, 1935; 311 B is
8246 dated November 18, 1936. He is furnishing some competitive information of a reduction in prices by a

competitive company. It is evidently an interoffice communication; (examining); 311 C is a letter from him to various individuals in "our" organization about this withdrawal of stocks at Brooklyn.

(COM. EX. 311-B, C and D was offered and received in evidence.)

Q. Was your company the first, Mr. Hart, to announce the withdrawal of stocks at Brooklyn on December 7, 1935?

A. To the best of my knowledge, yes.

Q. Was it the first to announce the installation of those stocks in July, 1935?

A. Yes, I believe we were.

Q. The withdrawal of those stocks there constituted a restoration, did it, or an abandonment of the low arbitrary prices then in effect?

8247 A. Yes, sir, it went back to its former price, in other words.

Q. The regular price based on Lehigh Valley or what, or Hudson Valley?

A. It was simply based on our best guess of what the competitive foreign cement price was, and we would pick up spotty postal cards quoting prices of foreign cement.

Q. I am talking about when you abandoned the arbitraries.

A. I did not understand you; I thought you meant the other way around, when we put in the original.

Q. No, when you abandoned the arbitrary in December, 1935.

A. When we went back to what you call the mill base plus freight, I believe the prices would be higher than when it was reinstated from the higher price up to the low point.

Q. It was lower—

A. (Interrupting) Lower than as you call it the basing point system.

Q. Why does your company follow the policy of selling only at delivered prices and not selling at f.o.b. mill prices?

A. Well, I think I could bring into this room probably fifteen different types of contractors. The yards concrete man and the cement sidewalk man and the brick mason, and so on, and he has no interest in a price up on the Hudson River or in Milwaukee or over in the Lehigh

8248 Valley district. What he wants to know is what the price is on the doorstep where he is going to use the product.

Q. He want to know his cost there?

A. He wants to know his price.

Q. He wants to know what it will cost him there?

A. That is correct. Call it cost or call it price, either way, it means the same to me.

Q. You don't get anything out of that delivered price except your mill net, do you?

A. No; all I can get is the most money that I can obtain for the product, and I cannot sell it at a premium. I want that understood.

Q. Is not one of the reasons you don't want to sell f.o.b. mill that you are then able to equalize your delivered prices at the same point with the delivered prices of your competitors?

A. Well, that is a long question. Will you please have it reread?

(The question was repeated.)

The Witness: I still don't get it.

Mr. Wooden: Cut out the word "then".

Examiner Norwood: Read it again.

(The question is repeated as follows:

"Q. Is not one of the reasons you don't want to sell f.o.b. mill that you are able to equalize your delivered 8249 prices at the same point with the delivered prices of your competitors?")

The Witness: I am not able to equalize anything. The only thing I can find is a competitive price. I cannot equalize any price.

By Mr. Wooden:

Q. Do you try to make your price at destination the same as competitors?

A. No, I don't try. I am out and find out what the competitors' price is in a given area or given city or a given market.

Q. And then try to meet it?

A. I certainly cannot get more for it. I must meet a competitive price.

Q. And there are some places closer to your mill where you could take less, aren't there?

A. If I understand your question correctly, I certainly could make a monopoly out of the cement plant, our own cement plant, at Catskill, New York, because I could chase everybody out of Catskill.

Q. And lower the price in doing so?

A. I guess I could lower the price and reinstate the monopoly in my own, near my home town.

8251 *Cross Examination by Mr. Leisure.*

Q. Mr. Harte, your company, you said, had three mills?

A. Yes, sir.

Q. And are they all non-base mills?

A. They are all non-base mills?

A. They are all non-base points.

Q. What determines the marketing policy of your company? Who determines that?

A. Well, I principally make all of the suggestions, Mr. Leisure, about sales matters subject to the approval of the president of our company, Mr. Porter.

Q. That is, the marketing policies?

A. Yes.

8252 Q. If the executives of your company wanted to make one mill a base mill tomorrow, they would be perfectly free to do so?

A. Absolutely. If we decided to make any of our plants a base mill, we would go ahead and do it.

Q. And those policies are not developed by any other person and any other company?

A. No, sir; we do not listen to any other company. We just form our own policies.

Q. And as to selling f.o.b. mill; if your executives thought it was good business to do so, could you start selling f.o.b. mill tomorrow, without consulting anybody else?

8253 A. Mr. Leisure, we would start this afternoon, sir.

Q. And does the same apply to your prices? Is your company free at all times to decide the prices and conditions under which it would sell?

A. Yes, sir; we try to obtain the most money we can in a given market.

Q. And has your company ever been a party to any agreement or understanding with any other manufacturers with regard to prices?

A. Not in my connection with the company, in my period of time with the company, Mr. Leisure.

Q. Mr. Wooden suggested that in selling cement, the most important thing to you was the amount netted at the plant. Could you net anything at the plant if you did not sell the cement first?

A. No. I think that question answers itself.

Q. And could you sell the cement if your destination price or sale price was higher than your competitors' prices at the same place?

A. No, sir; no one in my experience has ever paid more money for one brand of cement than another.

Q. And then you meet competition as you find it, 8254 in the field?

A. Yes, and that is the only place we can find it, that is, at the point of use.

Q. If you sought to lower it, the other cement companies would do the same thing?

A. Well, I think I read part of the transcript where some man in Knoxville tried to get a preferential price, but it lasted about twenty-four hours, if I recall the transcript.

Q. And it is a fact, if others wanted the business, they would have to meet the new price?

A. They would certainly have to meet the lowest price they found.

8256 Q. Mr. Wooden asked you whether you tried to quote the same price as your competitors. In your experience, if you sold cement at prices being quoted by your competitors, would that be the best available market price?

A. That would be, I would say, the lowest available market price.

Q. An the best to you?

A. The best to ourselves, yes.

Q. And it would be the best available market that you could obtain for your goods at that place?

A. That is correct, sir.

Q. Can you get more than the market price at any destination?

A. I have not been able to do it in thirty years.

Q. And do you feel it your duty to your organization to try to get the best available market price for your goods when you sell them?

A. If I didn't get the best price, or obtain the best price, probably the Board of Directors may get a better sales manager.

Q. Does the fact that you operate non-base mills mean that you do or do not ordinarily act as price leaders?

A. In my experience we have only acted twice, I think, as price leaders.

8257 Q. And I think you said one of those was in Brooklyn—

A. (Interrupting) One in Brooklyn and one in Baltimore.

Q. With respect to that Brooklyn incident, was that in July of 1935?

A. July, 1935.

Q. As to that I think you said that you did this in the effort to meet foreign competition?

A. That is correct.

Q. And did you try to meet foreign competition in kind, foreign cement arriving at Brooklyn in paper sacks, when you sent cement to Brooklyn?

A. Yes, we tried to meet it in kind. The foreign cement came in and rented a warehouse. We did not want to lease the buildings, so our next best effort was to place a cargo on a barge, and by having the barge in about the same area as the competition of foreign cement, that was meeting competition in kind.

Q. What did you do by way of giving notice of the price and the conditions under which you were offering cement in Brooklyn?

A. We broadcasted our quotations to the trade, I think July 12th or 11th, 1935, that everyone would know our market price in that area. There was no secret about our price. We broadcasted it so that every buyer would know about it.

8258 Q. That was one of the exceptions which you have
8259 told us about, as to the price leadership; and I think you said the other was at Baltimore?

A. That is correct. That condition in Baltimore was somewhat similar to the Brooklyn situation.

Q. I thought you said on your direct examination that you did it to keep your competitors out.

A. I am coming to that. The reason that we put the price in Baltimore, you had a New York market here, with a very low price, and our Baltimore market was a higher priced market. It was the theory of our company that with so many plants in Lehigh Valley and with the lack of cement, naturally our competitors would go where the market was higher, and we figured they would all land in Baltimore about the same day. Therefore we lowered our

price there. But I must say that it did not coincide with our thoughts one hundred per cent, because we still found people striving for trade, and some of our competitors came to Baltimore, and we may have to lower it again to keep some of them out, I don't know.

Q. Mr. Wooden asked you if you instructed your salesmen not to deviate from base price plus freight. Do you do that, or do you instruct your salesman to quote the market price, if you want the business?

A. No salesman has ever been given orders by me directly or by any member of our organization, to do
8260 certain things. We have a sales policy. In some cases the salesmen carry a destination price list that is prepared in our general office. Some of them use freight books; some do not use freight books. Freight rate books are simply a way of saving dollars, if you are trying to run an organization. If we did not have the freight rate books, it would mean additional clerical force. And we have railroad tariffs. When you are breaking in young people in a traffic department it takes two or three or four years before they know what you are talking about when you are talking about the tariff. If you put a tariff on my desk I personally could not read it. If I want traffic information I have to go to the traffic man.

Q. In regard to these prices Mr. Wooden several times asked the question if it might be the equivalent of base plus freight of some mill.

A. Certainly it may be the equivalent.

8261 Q. It may be that and it may be the equivalent and it may be the equivalent of a baseball bat and a new hat. Does it make the least difference to you what it was the equivalent of if it was the market price?

A. I don't care what the equivalent was, Mr. Leisure.

Q. Would it make any difference what the equivalent was if it was the market price? Is that correct?

A. I want to know the market price. That is the information I want to develop.

8262 *Cross-Examination by Mr. Leake.*

8264 Q. From the location of your plant, you have been peculiarly susceptible to the influence of the foreign importations of cement. Have you secured the accurate statistics of the importations of foreign cement

from 1934 to 1937? If you have, will you please state them for the record?

A. I have them as prepared by the United States Bureau of Mines. In the year 1934—this is all imports into the United States—265,997 barrels.

The Witness: This is all at seaboard. You don't have to go inland very far. Maybe a hundred miles inland in some cases.

1935, 618,043 barrels; 1936, 1,658,903; and 1937, 1,792,018.

By Mr. Leake:

Q. Has that increase in the importation of foreign cement had any effect on your business?

A. Yes, it has had a great effect on our business.

Q. An adverse effect?

A. Very adverse effect, because it is taking business away from us, and with the situation of our three
8265 plants, we have more impact of foreign cement, I think, than any other competitive cement manufacturer. It is all at the seaboard.

Q. Let me ask you just one more question, Mr. Harte, and then I am through. Has your company made or lost money since 1928?

Mr. Wooden: Your Honor, I want to object to that as not being comprehended within the issues of the case.

Mr. Leake: I think that is very material.

Examiner Norwood: I think he can tell us that.

Mr. Wooden: If there is an unlawful combination in a situation, it does not make any difference whether they did or did not make or lose money.

Mr. Leake: I want to show it is bad enough now without whatever else they are going to try to do to us.

Examiner Norwood: I think he can show the effects to round out the picture. Answer the question.

The Witness: Mr. Wooden, I don't believe—

Mr. Wooden: (Interrupting) You don't need to address me.

The Witness: I don't believe that the Federal Trade Commission wants to put industry out of business—

Examiner Norwood: (Interrupting) Just a mo-
8266 ment. Answer the counsel's question. Read the question.

The Witness: I know the question. We have lost money every year consecutively since 1929.

Redirect Examination by Mr. Wooden.

Q. Mr. Harte, these varying mill nets that you spoke about in your own organization, aren't they the automatic reflection of the fact that your delivered prices at given places are the same as the delivered prices of your competitors?

A. I don't get what you mean by "automatic" there. You can answer that question just on my own statement, that all we get—all we obtain—is the best price we can get in the market. Now, if you want to take a freight rate tariff and figure back that the freight rate is forty or fifty cents, I think maybe you are going to prove your answer,
but I don't have anything automatic, Mr. Wooden,
8267 except that I must send representatives into a market and obtain the best competitive information I can obtain, and I certainly don't want to give away money, and I want to get the most I can.

Q. You don't want to be any lower than your competitors?

Mr. Zimmerman: Off the record.

(Discussion off the record.)

By Mr. Wooden:

Q. What is the answer to that, Mr. Harte? Isn't the varying mill net of your organization a reflex of the fact that your delivered price at different places is the same as your competitors?

A. I don't want to answer it yes or no, because I would not be giving you a proper answer, Mr. Wooden. I think it goes back to the question what the destination price is. You can take the freight rate book or
8268 I can. If you want to call it a reflex, you can go and get mill nets and a variance of the mill nets.

Q. All right. That is an answer. You have salesmen out soliciting trade at various places with price lists, delivered price lists in their hands which provide the same delivered price at destination that you expect your competitors have at that destination.

A. I have never seen a competitive list in any competitive salesman's hands. I cannot answer that.

Q. I am talking about your own salesmen.

A. Our own salesmen have our own price lists.

Q. And you expect those delivered prices to be the same as the delivered prices of your competitors?

A. No, I am still looking for information. I don't know whether the price is lower or higher until I go out and try to ascertain the competitive market.

Q. After you have ascertained it, you find that certain base prices appear in the picture?

A. I don't know. I have assumed with you that it may be a base price and I am going to call our price a net, a mill net. I am not going to call ours a base, because we are not a basing point.

Q. On this matter of five days' notice. You do that only when you take the lead in a price change, do you not, and if somebody else takes the lead, you may give
8269 only one or two or three or four days' notice?

A. No. I think our policy right along has been to give five days' notice, and then of course the buyer has an advantage. If it is a decrease in the price, he also obtains if the car was in transit and in his warehouse, and he bought at a higher price, we would go back and refund him for the five days, that he would not be penalized.

Q. If you give somebody five days' notice and there is a prior five days' notice out, you are behind on the change then, are you not?

The Witness: If I understand your question, if we give five days' notice and there is a quotation in the field effective on the 20th and we pick it up on the 18th, you believe that we should go to the 23rd?

Q. No; I am trying to show just the opposite. You make your increase effective on a two-day notice in that case.

A. On immediate notice if we had to meet the competition. If the operative date was the 22nd of the month and we picked it up on the night of the 21st, we would make it effective immediately and not five days hence, and that would be meeting competition.

8270 Q. That is what I was trying to get. You cut your price to meet foreign competition; why don't you cut it to keep out domestic competition in the territory where you have an advantage?

A. Well, I don't want to answer that and have it misunderstood. But if I cut the prices any more—I have already stated that we had a loss since 1929, and we had a price war in 1931, and I don't want a price war in 1935, 1936, 1937, 1938 or 1939. We are still losing money.

8275 Chicago, Illinois,
Tuesday, June 21, 1938

8276 R. F. MILWEE, JR., a witness produced on behalf of the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

Q. Mr. Milwee, you are now connected with the Securities and Exchange Commission, are you?

A. Yes, sir.

Q. Were you formerly with the Federal Trade Commission?

A. Yes, sir.

Q. In the course of your employment by the Federal Trade Commission, did you have occasion to engage on cement investigation some years ago?

A. Yes, sir, I did.

8277 Q. Will you state in a general way what you did and where you went?

A. My work on the investigation began along in May, 1931. It began in New York and from there to Chicago and in the Middle West, and finally out on the West Coast in 1932.

Q. What did you do in a general way in the course of your travels that you have just outlined?

A. Well, acting on directions from the Commission, I would call at various cement manufacturing companies, the officers, and examine rather voluminous files and correspondence and other material, make selections from those. Sometimes they would be forwarded to Washington and photostated there, and sometimes copies would be made at the offices and sometimes I would make the copies.

Q. Did you do such work alone at times, and at other times with other people?

A. I worked largely with Mr. Royall of the Federal Trade Commission staff.

Q. Did you sometimes work alone?

A. Yes, sir.

Q. In the course of your work as you have outlined it, did you have occasion to visit the Idaho Portland Cement Company?

A. Yes, I did.

Q. Where was it located?

8278 A. I think the plant was located in Inkom, Idaho; to the best of my recollection that is where they maintained their offices.

8279 Q. Whom did you see there?

A. Mr. J. E. Maxfield.

Q. Who is he?

A. He was an officer of that company. Whether he was —I think he was the vice-president of it.

Q. What did you do in connection with your call upon Mr. Maxfield?

A. I examined certain correspondence in his office and talked with him.

Q. Did you ascertain from whom who the officers of the company were?

A. Yes, I did.

Q. Did you ascertain who the president was?

A. Mr. Eugene Enloe, of Spokane, Washington.

Q. In the course of your examination of the correspondence files, did you examine correspondence between Mr. Maxfield and Mr. Enloe?

A. Yes, sir.

The witness identified Com. Exs. 1196 A-T, inclusive, as photostatic copies of original letters and copies of letters that he examined on the occasion of his visit to Mr.

8280 Maxfield and selected from Mr. Maxfield's files. Mr. Maxfield was an official of the Idaho Portland Cement Company. J. G. Doerr was a sales agent for the company located at Boise, Idaho, at that time, and Mr. Maxfield informed him that he was agent for Idaho Cement Company. He did not recollect whether he had ascertained from Mr. Maxfield who N. J. Dolph, of Spokane, was.

Mr. Wooden: I offer these documents for the record, your Honor.

8281 Mr. Leisure: Your Honor, the file that is just being offered, consists of some twenty exhibits or pages and correspondence between certain parties.

When large numbers of exhibits are offered at one time this way, it seems to me, to keep any semblance of order in the hearing, there must be some showing as to how the individual letter or letters applies to any issue or issues in the case. The fact that one letter may bear upon some issue would not cause us to believe that other letters will

tend to have any connection with that subject matter and would also bear upon the issue.

So I raise the general objection to an offer of this kind, unless there is some showing made first so that we may have an opportunity of meeting what the Commission is offering to prove, the offer is objectionable. If just a bundle of papers are put in without anything being stated as to what they are intended to prove, it does not really amount to a hearing or a trial because we have no opportunity of meeting it; we do not know what the purpose of the offer is. It seems to me they should not be admitted until it becomes clear to your Honor that they are material and relevant and do bear upon some issue and prove or tend to prove some issue in the case.

8282 Examiner Norwood: I think there are two or three unsigned ones there, right along in that group.

Mr. Leisure: Yes, sir. We should have the oppor-
8283 tunity of cross-examination, particularly in hearsay documents of this kind, where the authors have gone to great length in giving their understanding of certain things.

Then I notice on K also another unsigned document, and it is filled with hearsay, the kind of hearsay that the witness would not be able to give himself if he were on the stand.

Examiner Norwood: Do you say that there is hearsay in J?

Mr. Leisure: Yes, sir.

Examiner Norwood: J and K?

Mr. Leisure: Yes, sir. And M is written by one Doerr to a Mr. Simmons. Mr. Simmons is unidentified; I don't know who he is, and Mr. Doerr is not a respondent.

I submit that we should not be bound by testimony of that kind.

Examiner Norwood: Which is that one?

Mr. Leisure: That is M. And it is also, I think, if your Honor will observe in looking at these exhibits, M is also filled with hearsay.

Then O is another unsigned letter. It is to a Mr. Doerr, and I do not know who the author of the letter is, and the letter is not admissible and Doerr is not a respondent,
8284 but it is a communication between two third parties.

I have the further observation to make that all of this correspondence, which does not seem to be connected

with any single transaction or with any series of events is very remote. It goes back to 1930 and 1931.

I therefore submit that the entire file is incompetent, immaterial and irrelevant and should not be received in evidence.

8285 I have the further objection that on Exhibit P there is a series of correspondence with the Union Pacific Railroad, and therefore ought not to bind the respondents in any way. Any letters written by the Union Pacific Railroad should not be offered unless the witness takes the stand and can be cross-examined.

Examiner Norwood: Anything further?

Mr. Zimmerman: I have further objection to the form of the exhibits.

The documents themselves go back to January, 1930, and range on through as late as June, 1931. It has been contended by counsel for the Commission, erroneously, I believe, that any respondent who has been a member of the respondent Institute and remained a member of the respondent Institute subsequent to the filing of this complaint is thereby in some way connected with every act done by every other respondent.

Now, Marquette was not a member of the Institute in 1930 and '31. They could not have known anything about these transactions. Unless there is some showing that they were in some way connected up with that, ratified or approved it in any way, they are not to be admitted as against Marquette or any other company similarly situated.

8286 I called attention to the contention of the Commission with reference to membership in the Institute, because even under that theory it would be necessary to make some showing that there was some connection between these documents and the Institute. There is none. The documents do not tend to prove any material allegation of the complaint. They have not been properly identified, and they are therefore incompetent.

The question of relevancy and materiality is also involved, but that only arises after the documents have been shown to be competent. They not only contain hearsay and expressions of opinion, but there is no identification of the parties to whom they are addressed, or who wrote them; and there is no showing that they were actually mailed or received. For all of those reasons I object to them.

Examiner Norwood: Now, as to the connection with the particular respondents, of course, we have our understanding and exceptions, and explanations with regard to that; but they are all subject to connection, which must appear from the entire record. That is understood. You might say that is the condition which attaches to all of this testimony.

Mr. Leisure: With respect to that I would like to
8287 point out, your Honor, that none of the western companies were members of the Institute until 1933; so if Mr. Wooden is attempting to connect them through the Institute certainly this entire exhibit should not be admitted in evidence.

Mr. Wooden: Your Honor, as to that latter point the exhibits are offered as writings of a respondent. That applies to most of them, and they do involve other company respondents. Whether or not the Institute is involved is another question. As to the man Enloe, he is the president of the company, and he acknowledges and replies to a number of these so-called unsigned documents which are referred to; and it is a series of correspondence such as would take place between the officials of a company. In other words. the unsigned papers are substantially shown to be, I believe, the writings of Maxfield, the manager, Mr. Enloe, and Mr. Enloe's replies to them. Some of the replies of Mr. Enloe are addressed to him, and refer by date to the letters which are obviously file copies, and therefore unsigned.

As to Dolph, I would like to offer to show that Mr. Dolph
8288 is a director of the Idaho company, by a letter addressed to the Commission, and signed by Mr. Maxfield, dated May 19, 1937, giving Mr. Dolph among the list of directors of the company. And on that point I wish we could reach a stipulation, if that is the fact.

As to Mr. Doerr, Mr. Milwee testified that Mr. Maxfield informed him that Doerr was the sales agent of the company.

As to the Union Pacific correspondence, P to T, that includes correspondence of the respondent Idaho Company with the Union Pacific with regard to working out a freight rate situation satisfactory to it and the company in Montana. I believe it is the Trident Company, I don't recall the name of company just now.

Mr. Zimmerman: If the Court please, Mr. Wooden has

stated that these exhibits refer to relations between the Idaho company and some of the respondents. May I ask Mr. Wooden to state for the record what is included in the term "some of the respondents"?

Mr. Wooden: Several other companies which are named in the correspondence.

Mr. Zimmerman: Do you not think that it ought to be confined, since it is prior to any connection with the
8289 Institute, that it ought to be confined to the particular companies that he says are involved? It would simplify the matters very much at a later date.

Examiner Norwood: It will be received under the same conditions that attaches to all of the testimony. If it is not connected with any particular respondent, it will not be considered as against them, from the entire record.

Mr. Zimmerman: It means that at the close of the testimony we will have to do a vast amount of work in moving to strike and in reviewing all this situation which can be saved, easily saved, if Mr. Wooden in good faith will undertake to show the fact, or to state that he does expect to show that there is some connection between any of the matters referred to in these exhibits and the Marquette company.

Examiner Norwood: I don't think it will be necessary for him to state that on each and every occasion when he offers a new batch of correspondence.

8296 Q. Mr. Milwee, I would like to ask you one further question about your interview with Mr. Maxfield. Did you ask him anything about the territory within which his company made sales?

A. That was the general practice to inquire in regard to their sales territory.

Q. Did he make any statement to you as to the territory within which he did business?

A. To the best of my recollection and belief, he stated that he did not ship into Utah.

Q. Did he say why?

A. My recollection is that it was because of the retaliation from the plants in Utah.

Q. Did you ask him whether he shipped into Oregon?

Mr. Leisure: Just a moment, please. I don't know how many questions Mr. Wooden is going to ask along this line. I assume that the proof is directed at some admission on the part of this sales representative which would bind his company.

Examiner Norwood: Yes.

Mr. Leisure: And I submit that until some basis is laid showing that he had authority to bind his company, that he was an officer or held some position which would
8297 authorize him to speak for his company, that the testimony is not admissible and it would not be binding against his own company much less against any of the other respondents.

Mr. Wooden: The letter to which I called Mr. Leisure's attention signed by Mr. Maxfield showed that he was the vice president, I believe.

Examiner Norwood: Objection overruled.

Mr. Wooden: There is a question pending, I believe.

Examiner Norwood: Read the question.

(The question was repeated.)

The Witness: Having refreshed my memory from the interview report, to the best of my recollection I did ask him that.

By Mr. Wooden:

Q. What did he say?

A. As I recall, he stated that he did not.

Q. Did you have occasion about that time to examine the files of the Utah Sales Agency at Salt Lake City?

A. Yes, sir.

Q. Whom did you deal with there?

A. Mr. Ralph Bristol.

Q. Who is he?

A. He was an officer of the Utah Sales Company.

8298 Q. Did he have any connection with the Utah Idaho Cement Company?

A. Yes, sir, I think he was an officer or manager of that company. I don't recall definitely what his position was.

Q. Was that located at Salt Lake or at Ogden, Utah?

A. My interview with Mr. Bristol was at Austin.

Q. Did he allow you to examine the files there?

A. Yes, sir.

Q. Do you know whether parties by the name of Day were connected with either of those companies that you have just named, and if so, what was their connection?

A. As I recall it, Mr. Bristol was a son-in-law of Mr. Day.

Q. What Day was that?

A. I believe it was H. C. Day, and I think—I don't recall definitely whether that was his initials or not.

The witness identified Com. Ex. 1197 as a copy of a memorandum that he had obtained from the files he examined in the offices of Mr. Bristol of the Utah Sales
8299 Company and also the Utah-Idaho Cement Company. He had discussed the memorandum with Mr.
8300 Bristol. He recognized his own pencil handwriting
8301 which he had placed there when he obtained the exhibit. The figures in his handwriting were duplicates of the figures in the first line of the typewritten memorandum. He had placed over those figures certain headings as a result of information that he imagined he obtained from Mr. Bristol.

Q. Mr. Milwee, did you call at the office of the Yosemite Portland Cement Corporation in connection with your investigation for the Federal Trade Commission?

A. Yes, sir.

Q. And did you examine files there and make selections from them?

A. Yes, sir.

Q. Can you state with whom you dealt there in connection with your examination?

A. Mr. Holmes, as I recall it. T. K. Holmes.

Q. Who is he?

A. I don't know whether he was the sales manager or an officer of the company, I don't recall. He was one or the other.

8302. Q. I am going to show you papers marked for identification as Commission's Exhibit 1198-A to G, inclusive. What do you know about those papers?

A. These are photostatic copies of material that I examined and selected at the office of the Yosemite Portland Cement Company.

By Examiner Norwood:

Q. From its files?

A. Yes, sir.

Mr. Wooden: I will not offer them at this time, Your Honor.

Q. Did you on your investigation have occasion to visit the Northwestern Portland Cement Company of Seattle?

A. Yes, sir.

Q. Can you say about when that took place?

A. I will have to refresh my recollection on that. (Examining documents.) Along in April of 1932.

Q. And with whom did you deal there?
A. Mr. C. T. W. Hollister.
Q. Who is he?
A. He was the president of the company.

8304 Examiner Norwood: I have examined the remainder of these exhibits, 1196-A to T. With regard to 1196-D the expression "I understand it is not advisable even if we could do so to draw an imaginary line across which none of the cement companies should ship" and so forth there, is merely explanatory to the other statement in the letter, and I will say with regard to that and any others there which contain statements which might be considered hearsay, that they will not be considered against these respondents in the absence of other testimony, direct testimony, on the point, but I am admitting these because they are connected up and for their value outside of any hearsay that might be contained in it. And so the objections are overruled and Commission's Exhibits 1196-A to T are received as marked.

(COM. EX. 1196-A to T was offered and received in evidence.)

8307 Mr. Wooden: Now, your Honor, in view of your ruling admitting Exhibits 1196-A to T, inclusive, I desire to offer at this time Exhibit 1197 for identification, because by comparing it with 1196-F and G, it will be found that the prices quoted in the two papers correspond for the companies that are named in the two papers, and in 1196-F and G the writer states that they were the low bidder on the 60,000 barrels and a little high on the fifteen thousand, "and this is as it should be; you will see they laid off on the big bid and we raised our sights on the 15,000 barrels."

Examiner Norwood: What does this paper add to it, 1197?

Mr. Wooden: I attempted to show through the witness and I shall try it again, that this has reference to a meeting at which these prices here were worked out, and I am offering that, here your Honor, at this time, I should say, on the theory that although not respondent parties to the case they were, as shown by respondents' exhibit, cooperating with respondents in collusion.

Examiner Norwood: In other words, in these exhibits you want to show some other company followed the leadership of these people here?

Mr. Wooden: Not wholly, but that is part of it.
8308 It is the general theory of the writings or actions of co-conspirators, although not parties.

Examiner Norwood: Will there be any objection to that?

Mr. Wooden: And in the same way I want to ask the witness the question which was objected to and objection sustained, about what Mr. Bristol said about that paper.

Examiner Norwood: Is there any information about Mr. Bristol?

Mr. Wooden: Yes. The witness has testified who he was.

Mr. Leisure: There is nothing pending now. There is nothing I can say upon it.

Mr. Wooden: No, that is true.

Examiner Norwood: I thought he had asked the question.

Mr. Wooden: I did, but an objection was sustained to it.

Examiner Norwood: Let us see what you have to say about that paper. Let us settle that first.

Mr. Leisure: Your Honor, unless this paper is in some way connected with some of the respondents, I must object to it. It has not been properly identified in any way. It is made, according to the witness' testimony, by some-
8309 one who is not a respondent in this case. I do not think we are bound, so far as these writings are concerned, by the witness.

Examiner Norwood: He can explain that writing.

Mr. Leisure: He is on the witness stand and he can testify to anything he wants to tell us about this transaction. I know of no rule that will allow him to offer some letter or some writing of his in lieu of his testimony. And I object to the receipt of the memorandum as incompetent, irrelevant and immaterial, not binding on any of the respondents.

Mr. Wooden: Your Honor, if the witness could be withdrawn, I would make a full offer of proof of what I propose to show.

Examiner Norwood: You want the witness to go out of the room?

Mr. Wooden: Yes.

Examiner Norwood: Just step out, please, Mr. Witness.

(The witness here left the stand and the room.)

Examiner Norwood: Go ahead.

Mr. Wooden: I propose to show, your Honor, by the

witness, as I have already shown, that he obtained this document, Exhibit 1197, from the files of the Utah Sales Agency, of which Mr. Ralph Bristol was an
8310 officer, that he talked to Mr. Bristol about it and that Mr. Bristol gave him the information that enabled him to write the headings on the figures which he wrote, that Mr. Bristol also said that he recalled having attended a meeting about that date shown on there with these gentlemen named at the top.

Examiner Norwood: And Mr. Bristol being an officer of one of the respondents?

Mr. Wooden: No.

Mr. Leisure: Oh, no, that is the point.

Mr. Wooden: That is a point, and I have attempted to overcome it by offering it on the theory that Bristol's company cooperated with and did the things which Exhibit 1196-F and G show were done.

Examiner Norwood: By one of the respondents?

Mr. Wooden: Yes. By more than one of the respondents.

Examiner Norwood: Yes.

Mr. Wooden: There are at least two respondents covered—

Examiner Norwood: In there?

Mr. Wooden: Yes. (Continuing) —by the prices that are shown, the same as the ones in the Bistol memorandum.

Mr. Zimmerman: What would be the names of those?

8311 Mr. Wooden: Idaho and Oregon.

8312 (At this point, the witness Milwee returned to the hearing room and resumes the witness chair.)

By Mr. Wooden:

Q. Mr. Milwee, referring to Exhibit 1197 for identification, I asked you this morning about a conversation that you had with Mr. Bristol with regard to that paper?

A. Yes, sir.

Q. I am going to ask you again to state what that conversation was.

Mr. Leisure: Your Honor, I make the same objection that we made this morning. There has been no showing, no basis laid whatever for any testimony of this kind. There is no showing that Mr. Bristol was a co-conspirator or was

in any way involved in any of the transactions charged in this complaint. Until that showing is made, it seems to me the testimony as to what he said should not be admitted in evidence.

Examiner Norwood: I think you will have to lay a ground for that conversation.

Mr. Wooden: I submit, your Honor, that the ground has already been laid in Exhibit 1196-F and G, showing that the Utah Idaho Company with which Mr. Bristol was connected, bid certain figures on certain government projects.

Examiner Norwood: The Utah-Idaho Company is
8313 not a respondent, is it?

Mr. Wooden: No.

Examiner Norwood: That is just the point.

Mr. Wooden: There are two or three other respondents in this list of bidders, and I offer a conversation with Mr. Bristol on the same ground that I offered the paper itself, as a statement from a party who acted with certain respondents in the form of co-conspirators.

Examiner Norwood: I do not think we have enough testimony to show all of that yet. I think we had just better leave that open until we can get some more information on it.

By Mr. Wooden:

Q. Did you testify, Mr. Milwee, to your call at the office of the Northwestern Portland Cement Company?

A. Yes, sir.

Q. And to an examination of files there?

A. Yes, sir.

Q. And the selection of documents?

A. Yes, sir.

Q. I am showing you papers marked for identification Exhibits 1199-A to L, inclusive, and I will ask you to state what they are?

A. (Examining papers) This is material that I
8314 obtained from the files of the Northwestern Portland Cement Company at Seattle on the occasion of my investigation.

Q. Did you state with whom you dealt there?

A. Mr. Hollister.

Mr. Wooden: I am not offering any of these papers at this time, your Honor. If there is any cross-examination

regarding the identification of them or of the Yosemite papers which he also identified this morning, I would be glad to have it at this time.

Mr. Zimmerman: How could we cross-examine on something that we have not seen?

Mr. Hershberger: How can we do that when we have not seen them?

Mr. Wooden: Merely as to his identification.

Mr. Hershberger: We want to see them.

Examiner Norwood: Is there any objection to seeing those exhibits for identfication?

Mr. Wooden: I suppose not, for that purpose. (Handing papers to respondents' counsel.)

Mr. Leisure: May I ask the witness a question on these?

Examiner Norwood: Certainly.

Mr. Leisure: I notice that Exhibit 1198-E is on the letterhead of the Farmers Cooperative Exchange, Inc.

Do you recall where you got the original of that

8315 letter from?

The Witness: The original of this letter was apparently obtained from the office of the Yosemite Portland Cement Company.

Mr. Leisure: And whom did you talk to there? Mr. Holmes, did you say?

The Witness: Yes.

Mr. Leisure: And he made the files there available to you and you selected this as one of the documents that you wanted to keep; is that the way you goe it?

The Witness: Yes.

8316 Mr. MacIntyre: If the Examiner please, I would like to interpose an objection here, and that is this: That when counsel are handed exhibits for the purpose of cross-examination on identification, their examination of those documents should be confined, until the documents are offered in evidence, to identifying marks, and identifying marks only, rather than going into the entire contents of the document with respect to this witness, until the witness himself has been asked concerning the contents of the document.

Examiner Norwood: I think they may examine the documents to see if there is anything about the that applies to the identification. They might raise some question as to the identification.

Mr. Wooden: But there is a limit to the cross examination.

Examiner Norwood: I don't think that counsel are going to abuse that privilege.

Mr. Zimmerman: You don't have any objection to our looking at them, do you?

Examiner Norwood: I don't think so.

Mr. MacIntyre: We thoroughly agree that all counsel should examine them with respect to any identifying marks as to which this witness' examination
8317 is to be based, but as to the contents, with which this witness' testimony has nothing whatever to do, we do object to going into the entire documents, until they are offered in evidence.

Examiner Norwood: I am going to trust the counsel for the respondents to make a superficial examination, you might say; anyway, not to abuse their privileges. If they want to look at them to see if there is anything about them or in them that would suggest any questions as to their identification, they should be permitted to do so.

Mr. Wooden: I will not submit further documents to be examined in detail, Mr. Examiner. As Mr. MacIntyre says, their cross-examination should be limited to the identification alone, instead of a perusal of the contents.

Examiner Norwood: I think counsel glancing over those papers that have been offered for identification, they will have to read them after they are offered, prior to their being accepted. We might save time. I cannot see any harm in this.

Mr. MacIntyre: That is true, your Honor, if the documents are to be offered in evidence, but if the documents
are not to be offered in evidence, but are to be used as
8318 a basis for questioning certain witnesses, what is being done here today is simply turning over to respondents' counsel all the questions and all the basis for questions that may be used in questioning their clients when and if they are called to the witness stand.

Mr. Leisure: In regard to being technical—and I hope we are not—whenever any exhibit is shown to a witness for identification, then counsel on the opposing side have a right to look at the document and read it, if they want to, if you want to be technical. All we want to do is to look at them and nothing more, but if you are going to be technical, we have got that right.

Mr. MacIntyre: I will thoroughly agree with counsel for the respondents as to any marks on the documents that this witness uses as a basis for his identification.

Examiner Norwood: I cannot limit counsel. If they are offered for identification, counsel on the other side may see them.

8319 Mr. Leisure: May I ask the witness a question about this Exhibit 1199-I?

Examiner Norwood: Yes.

Mr. Leisure: Do you know who made these marks on the map? Do you know who made that up?

The Witness: (Examining)

Mr. Leisure: Do you know what it purports to show?

Examiner Norwood: I don't know whether we can go into that or not. They are not offered yet. Off the record.

(Discussion off the record.)

Mr. Leisure: The exhibits which I have referred to, Mr. Milwee, do you know who made it up?

The Witness: No, sir, I do not.

Mr. Zimmerman: May I ask one question, please?

Examiner Norwood: Are you through, Mr. Leisure?

Mr. Leisure: Just one moment.

Mr. Zimmerman: When you get through.

Mr. Leisure: I have a group of yellow sheets here, Mr. Milwee, and they have been marked 1199-J, K and L. Do you know who made them up?

The Witness: No, sir, I don't recall if I knew.

Mr. Leisure: And as to Exhibits 1199-E, F and G and H which seems to be in typewriting, do you know

8320 who made those up?

The Witness: This was one of the exhibits selected on the occasion of my visit to the office of the Northwestern Cement Company, and to the best of my recollection, I believe it was prepared at the office there. That is as far as I can go. I could not say who made it up.

8322 Q. Mr. Milwee, did you call on the offices of the Northwestern States Portland Cement Company at Mason City, Iowa?

A. Yes, sir.

Q. With whom did you deal with there?

A. I will have to refresh my memory on that.

Q. All right.

A. Mr. G. B. Cabanis.

Q. Did you examine the files in there and make selections?

A. Jointly with Mr. Royall, as I recall it. We were both there.

The witness identified Com. Ex. 1201 A-E inclusive as photostatic copies of letters and memoranda that he examined at the offices of the Northwestern States
8323 Portland Cement Company, on or about October 12, 1931.

The witness identified Com. Ex. 1201 A as a photostatic copy of one of the letters selected at the Northwestern Portland Cement Company. It and others were taken from the files of the company by the witness.

8330 I. D. ROYAL, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

I am attorney for the Federal Trade Commission and have been so engaged for about nine years. During that time I have had occasion to conduct or do work in connection with the Commission's investigation of the Portland Cement Manufacturing industry. That was in the periods 1931-1932, and 1933 and, I think, in 1936 a little bit.

Q. In connection with that work did you have occasion to visit the offices of the Riverside Cement Company, Los Angeles, California?

8331 A. In 1932 I visited the offices of the Riverside Cement Company in Los Angeles.

Q. Who did you see there?

A. I think his name is Mr. Duque, if I remember rightly.

Q. Are you sure it was Mr. Duque you saw at the Riverside or the California Company?

A. Well, now, I will have to do what Mr. Milwee did, refresh my recollection on some of the officials' names and the companies they are identified with. This is a little memorandum I prepared last night for that purpose.

Q. What did you use as a basis for the preparation of such a memorandum?

A. I made this up, had this written this morning from notes that I took at your dictation from files which you were reading, which contained the names of the parties.

Q. Were those your reports that you had made at the time of your investigation?

A. They were. The official of the Riverside was Mr. Beckett.

Q. Do you have any independent recollection of your visit to the Riverside and having seen Mr. Beckett on that occasion?

A. Yes, I remember visiting the Riverside Cement Company.

Q. Did he permit you to make an examination of any files or other records of the Riverside Company?

A. He did.

8332 Q. Did you make any selections from his files during such examination?

A. Selections of certain material were made from their files.

8333 The witness identified Com. Ex. 1203 A-YY as photographs of materials that were selected from the correspondence files of the Riverside Portland Cement Company. Correspondence that he selected from "their" files.

8336 *Direct Examination by Mr. MacIntyre.*

During the investigation that I made into the cement industry for the Federal Trade Commission I had the occasion to call upon Mr. Arthur Shelby of Calaveras at which time I made an examination of the files and other records of Calaveras. I made a selection of documents from those files.

The witness identified Com. Ex. 1200 A-K as photographs of material that he selected from the files of
8337 Calaveras in the early part of February, 1932.

Mr. Leisure: May I ask the witness a question?

Examiner Norwood: Certainly.

By Mr. Leisure:

Q. In 1200-G there is a pencil memorandum that has been attached to the main body of the document. Did you attach that?

A. No, that was attached in the photostatic process.

By Examiner Norwood:

Q. Did that belong in the document?

A. That belongs with the material that was selected from the files.

By Mr. Leisure:

Q. Do you know of your own knowledge which particular document it belongs to?

A. I would not know without going over all of the material selected.

By Mr. MacIntyre:

Q. Mr. Royal, I would like to ask you one question. Have you recently gone over all of the material that you selected from the files of the Calaveras Cement Company, so as to refresh your recollection as to these particular documents?

A. I have gone over practically all of it, but I
8338 will say that I overlooked that little note that is pinned one one of the papers.

Examiner Norwood: Any further questions on the identification?

Mr. Leisure: I have no questions.

Examiner Norwood: Mr. Zimmerman?

By Mr. Zimmerman:

Q. I will ask you, Mr. Royal, if you know anything about these exhibits 1200-A to K other than what you have told us?

A. Well, only what I have told you in regard to the identification of them. Is that what you mean?

Q. Outside of the contents of them?

A. Outside of the contents, that is about all I know of them.

Q. That is all you know, is it not? It is not a question of about. You told us everything, except what you learned from the contents?

A. That is correct.

Mr. Zimmerman: All right, thank you.

Examiner Norwood: Go ahead. Pass those papers up, please.

Mr. Zimmerman: Just one question more, Mr. Royal, please.

By Mr. Zimmerman:

Q. Do these Exhibits 1200-A to K represent all
8339 that you took from the Calaveras files at that time, in February, 1932?

A. Well, I would not know that. The files were brought here and there may be some papers on the table in front of Mr. MacIntyre that I have not seen yet. I think that represents most of them.

Direct Examination by Mr. MacIntyre.

During my investigation of the cement industry I had the occasion to visit and examine the files and records in the office of Mr. R. L. Vance, an official of Monolith Midwest, at which time I made selections from the files.

The witness identified Com. Ex. 1202 A-P as photostatic copies of papers selected from the files of Monolith Midwest in Denver, Colarado, in August of 1931. "I made the selections or overlooked the actual selections that we did take eventually".

8340 Examiner Norwood: Are there any questions on those?

Mr. Leisure: No questions.

Mr. Zimmerman: Mr. Royal, is there anything that you know about these Exhibits 1202-A to P other than the content, that you have not told us?

The Witness: I believe not.

Mr. Zimmerman: I would like to be sure. You are the only one that knows.

The Witness: Aside from the contents I don't know of anything further in connection with them.

Mr. Zimmerman: All right, thank you.

Direct Examination by Mr. MacIntyre.

During my investigation of the cement industry during 1931 and 1932 I had the occasion to call upon Mr. C. N. Reitze, an official of Superior, Inc., at which time I made an examination of the files and records of Superior, Inc. On that occasion I made a selection of documents from those files.

8341 The witness identified Com. Ex. 1204 A-H as copies of the documents selected from the files of Superior, Inc. in May, 1932 by him.

Mr. MacIntyre: Any cross examination on this identification?

Mr. Leisure: No questions.

Mr. Zimmerman: Mr. Royal, do you know anything about these exhibits other than what you have told us, outside of the content?

The Witness: No.

Mr. Zimmerman: That is all.

Direct Examination by Mr. MacIntyre.

During my examination and investigation of the cement industry in 1931 and 1932 I had the occasion to visit Mr. C. C. Merrill, an official of Southwestern, at which time I made an examination of the files and records of Southwestern in Mr. Merrill's office.

I made a selection from those files.

8342 The witness identified Com. Ex. 1205 A-R as cop-
8343 ies from originals of material selected from the files of Southwestern at Los Angeles in January 1932 during his visit to the office of Mr. Merrill, an official of that company.

Examiner Norwood: Any questions?

Mr. Leisure: Not any.

By Mr. Zimmerman:

Q. Mr. Royal, do you know anything concerning or related to the exhibits marked for identification 1205-A to R, outside of the contents, that you have not already told us?

A. No, not outside of the contents and what was explained to me about the contents, by the parties.

Q. You mean that after you got them there was some explanation given to you about the contents?

A. Oh, quite frequently that has been done. Comments are made.

Q. Do you have any recollection about who you talked with about the contents?

A. Mr. Merrill.

Q. Of these particular exhibits?

A. Mr. Merrill.

Q. Anybody else?

A. Well, I interviewed Mr. Partridge also, the
8344 sales manager. I am not just positive now whether

be made any statements about any of this correspondence or not.

Q. Did you make any note or memorandum of those conversations?

A. Oh, yes, absolutely.

Q. Where are those notes and memoranda now?

A. I make reports of them, and they are in the files.

Q. Were they made in your own handwriting?

A. Those notes were made in my handwriting. Afterwards they were—

Mr. MacIntyre: If the Examiner please, we object to cross-examination of this nature. It has nothing whatever to do with the identification of the exhibits.

Examiner Norwood: Sustained.

Mr. MacIntyre: And that is the only thing I have asked in the way of testimony of this witness.

Examiner Norwood: Objection sustained.

Mr. Zimmerman: I am satisfied that they are. It is all right with me.

Examiner Norwood: Go ahead.

Direct Examination by Mr. Wooden.

During my investigation in 1931 and 1932 I had
8345 occasion to call upon Mr. E. E. Duque, an official of California, at which time I made an examination of the files and records of that company. I made selections of documents from the files during that examination.

The witness identfied Com. Ex. 1206 A-C as copies of papers selected from the files of California in Los Angeles in the office of Mr. Duque.

Examiner Norwood: Any questions?

Mr. Leisure: No questions.

Examiner Norwood: Pass them along, please.

Mr. Leisure: Just a moment. May I ask a question?

Examiner Norwood: Certainly.

Br. Mr. Leisure:

Q. As I understand it, these are copies you selected from the files; these are not copies you make yourself?

A. They are copies made for me in that office, if I
8346 remember right.

By Examiner **Norwood:**

Q. They gave you the copies?

A. They gave me the copies after I selected the originals.

Examiner Norwood: Go ahead, Mr. MacIntyre. Any questions further?

Mr. Leisure: No questions.

Examiner Norwood: Mr. Zimmerman?

By Mr. Zimmerman:

Q. Have you any knowledge concerning or related to these exhibits 1206-A, B and C, other than what you have told us?

A. No.

Mr. Zimmerman: Thank you.

Direct Examination by Mr. MacIntyre.

During my investigation of the cement industry in 1931 or 1932 I had occasion to visit the offices of Mr. B. C. Nelson of Beaver at which time I made an examination of the files and records of that company. I made selections of documents from those files at that time.

8347 The witness identified Com. Ex. 1207 A-i as photographs of originals of material selected from the files of Beaver in Portland, Oregon, in April, 1932.

Examiner Norwood: Any questions to be asked about those papers?

Mr. Leisure: No questions.

By Mr. Zimmerman:

Q. I will ask you the same questions about these, Mr. Royal. Do you anything about these Exhibits 1207-A to I, inclusive, or related thereto that you have not told?

Examiner Norwood: Outside of the contents.

Mr. Zimmerman: Yes.

By Mr. Zimmerman:

Q. Outside of what you have learned from reading them?

A. Outside of the contents, no, sir.

Q. All right, thank you. When you say outside of the contents, you mean what you have learned from reading them over?

A. That is right.

Mr. Zimmerman: All right.

8348 *Direct Examination by Mr. MacIntyre.*

During my examination of the cement industry in 1931 and 1932 I had occasion to visit officials of the International Portland Cement Company, Ltd., Spokane, Washington, at which time I made an examination of the files and records of that company. I made a selection of documents from the files during that investigation.

The witness identified Com. Ex. 1208 as a copy of an original letter found in the files of the International Portland Cement Company and selected from those files by him.

By Examiner Norwood:

Q. Was the copy furnished by the company?

A. The copy was furnished by the company.

8350 R. F. MILWEE, recalled as a witness on behalf of the Commission, testified further as follows:

Direct Examination by Mr. Wooden.

8354 He made selections of various papers from the files of the Olympic Company.

Q. I show you papers marked for identification Exhibits 1209 A to ZZ, and will ask you to state what they are.

Mr. Leisure: I move to strike out that portion of the witness' answer, your Honor, where he says he learned from Mr. Cameron that the corporation was a British corporation. I submit that is hearsay and not proper evidence.

8355 Examiner Norwood: Motion denied. I shall not consider that as conclusive evidence of that fact unless it is corroborated. I have let that testimony in to explain this other examination and the circumstances of the identification of these papers here.

The witness identified Com. Ex. 1209 A to ZZZ as copies of correspondence that he examined at the office of the Olympic Cement Company. They are copies of papers that he selected for the purpose of having copies made.

8356 Examiner Norwood: Proceed.

By Mr. Leisure:

Q. Referring to Exhibit 1209-VVV, it says "Extract from letter." Did you make the extract or is that the way

it was handed to you? You see, the heading says "Extract From letter."

A. I do not recall whether I made that or not.

Examiner Norwood: Any further questions?

Mr. Zimmerman: Let me ask the witness a question.

By Mr. Zimmerman:

Q. With reference to the document marked 1209-XX, I notice that there has been a change made in the date on that in red pencil from February to January. Did you make that change?

A. I have not any recollection of it at all, whether I did or whether I did not.

Q. Do you know anything about whose handwriting that is?

A. No, sir, I do not.

8370 Seattle, Washington,
Tuesday, June 28th, 1938.

Appearances:

Same as heretofore and Herbert S. Little, Superior Portland Cement Co.

Harold Shefelman, Northwestern Portland Cement Company.

A. W. Witherspoon, Spokane Portland Cement Company.

8377 H. G. PHILLIPS, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

I am chief clerk for Galbrith & Company, building material firm located in Seattle, Washington. The firm engages in the business of retail and wholesale building materials, including the buying and selling of building
8378 materials Portland Cement. I have been with the firm for 19 years and in my present position seven years. In connection with the performance of my duties in my present position I have something to do with the activities of my firm which show the prices which it pays for the cement it buys, and I am acquainted with the prices that it pays of my own knowledge.

Q. What firms does your firm buy Portland Cement from, Mr. Phillips?

A. The Superior Portland Cement Company and the Olympic Portland Cement Company.

Q. Are those firms with offices, in Seattle, Washington?

A. Yes.

Q. Do you recall the prices that your firms pay to these two firms at the present time for Portland Cement, Mr. Phillips?

A. Yes.

8379 Q. What is it?

A. In paper bags $2.55 per barrel, gross, f.o.b. cars in Seattle.

Q. What about in cloth?

A. $2.80 per barrel gross.

Q. What would be the so-called stripped price, that is exclusive of bags and discounts?

A. In paper containers $2.25 net and in cloth $2.70 less forty cents for the return of empty bags.

Q. Now, what is the nature of the cash discount, you spoke about; what is the amount of it and the terms under which it can be received?

A. Ten cents per barrel for payment fifteen days from date of invoice?

Q. Any further discounts?

A. No.

Q. Now, you have spoken of those prices as applying—are they the prices of both the Superior and the Olympic Companies?

A. Yes.

Q. No difference in prices?

A. No.

Q. How long have they been in effect to your knowledge, Mr. Phillips?

A. Well, I can't recall the date of the last price change.

Q. Well approximately?

8380 A. It has been in effect for a year, this price.

Q. More than a year?

A. I think at least a year, yes.

Q. Do salesmen of the Northwestern Portland Cement Company call upon you and quote prices to your firm?

A. We have done business with the Northwestern Portland Cement Company, but not for a very considerable length of time.

Q. Well, for how many years have you not done business with them?

A. Seven or eight years.

Q. Not within seven or eight years?

A. No.

Q. Have their salesmen called upon you or quoted prices to your firm within that time; within the past seven or eight years?

A. I have no recollection.

Q. Is it your understanding that in the performance of your duties there it would have been called to your attention if they had quoted prices to your firm during that period of time?

A. I think so.

Mr. Wooden: That is all.

Cross-Examination by Mr. Leisure.

Q. Mr. Phillips, in these purchases that you told
8381 Mr. MacIntyre about; you were talking about Standard Portland Cement, were you not?

A. I beg your pardon?

Q. These purchases that you have been discussing with Mr. MacIntyre from these two companies, you were talking about Standard Portland Cement, were you not?

A. That only.

Q. And you have purchased you said from the Superior Company. That was one of the companies you purchased from?

A. Yes, sir.

Q. And what were the terms of cash discount with respect to the Superior Company?

A. Ten cents per barrel for payment fifteen days from date of invoice.

Q. Are you sure about that?

A. Yes, sir.

Q. And what is it in the Olympic?

A. The same terms.

Mr. Leisure: That is all.

GORDON TONGUE, previously sworn, recalled on behalf of the Commission, testified as follows:

8382 *Direct Examination by Mr. Wooden.*

I am Secretary, Treasurer and Sales Manager of Superior Portland Cement Incorporated. I have been Sales Manager and Treasurer since December, 1925, and Secretary since January of 1938. We have our own factory at Concrete, Washington, and lease a factory here in Seattle. Concrete is 75 miles north and 25 miles east of Seattle.

Q. Does the Superior Portland Cement Incorporated maintain a membership in the Cement Institute?

A. We do.

Q. And for how long?

A. As I recall, June, 1933.

Q. Does it also maintain a membership in the Pacific Coast Cement Institute?

A. We do.

Q. And for how long has that membership been maintained?

8383 A. I have not the definite date. Probably over a year.

Q. Where does the Superior Portland Cement Incorporate dispose of its products?

A. Within the State of Washington.

Q. Do you sell some to customers located in Alaska?

A. We do.

Q. Do you have regular customers there who take your products?

A. Yes.

Q. Dealers?

A. Yes.

Q. Contractors? Or what?

A. Principally dealers; a few Bureau of Public Roads contractors.

Q. Is the Alaska business supplied largely or wholly from your Seattle plant?

A. Not wholly. I would say roughly about 60 per cent, and 40 per cent. That is just a rough estimate.

Q. What is the capacity of the two plants that you have referred to?

A. We have in years gone by given the plant at Concrete a rating of approximately 2,000,000 barrels a year, and the plant at Seattle approximately 1,200,000. However, due to modern cement manufacturing methods, those capacities have been reduced.

Q. To what extent have the two plants operated to
8384 capacity within the last eight or ten years?

A. Until about tow years ago we were running very much under capacity.

Q. At both plants?

A. At both plants.

Q. How much under?

A. In 1933, as I recall, we were about twenty-five per cent, possibly less.

Q. And since then what is it?

A. 1936 and 1937, we were up, I would say, above 60 per cent.

Q. At each plant?

A. Yes, sir.

Q. Your 25 per cent figure, was that 25 per cent of the capacity, or 25 per cent reduction below capacity?

A. 25 per cent—less than 25 per cent of the capacity; considerably less.

Q. How long has the mill at Concrete been operated by your company?

A. Since August, 1908. May I say that was when we made the first shipment. It was in the building process before then.

Q. And how long has the Seattle plant been operated under lease?

A. Since July 1st, 1931.

Q. From what company was the Seattle plant leased?

8385 A. The Pacific Coast Cement Company.

Q. Is that lease still operative?

A. Yes, sir.

Q. What is the term of it?

A. It runs until July 1st, 1941.

Q. Is that under a renewal?

A. Yes, sir.

Q. Five year renewal, was it?

A. Yes, sir.

Q. Can you say when the Pacific Coast Mill began operating?

A. The early part of 1929.

Q. Was there another mill that began operation before that?

A. Yes, sir.

Q. What was that?

A. The Northwestern Portland Cement, in 1928.

Q. Prior to that time what mills were there located in Western Washington?

A. Our own factory at Concrete, and the Olympic Portland Cement Company at Bellingham.

Q. What is the relation between the capacity of your two mills and the total demand and consumption in Western Washington?

A. Well, that of course would vary with the consumption in each year.

Q. Give us the range there covering the period of
8386 several years?

A. I have not those figures in mind, Mr. Wooden, that I can give you a definite answer.

Q. To what extent has the capacity of the Superior Mill at Concrete and the Olympic Mill at Bellingham—is that right?

A. Yes.

Q. (Continuing) —been sufficient to supply the demand in this territory over a period of years?

A. Far more than sufficient.

Q. How about the capacity of the Concrete Mill itself?

A. I would say that that plant had practically enough capacity to take care of normal demands.

Q. Do you know what the total consumption in this State is?

A. I have not the figures in mind. Again it varies.

Q. Or the total consumption for Western Washington?

A. No, sir.

Q. As I understand it then, prior to 1928 your Concrete plant and the Olympic plant at Bellingham were the only mills operating in this district?

A. Yes, sir.

Q. At that time or during this period did your mill do some business or make some sales on an f. o. b. mill basis?

A. The date again, Mr. Wooden?

Q. At the time you and the Olympic were the only ones here.

A. Yes, sir.

8387 Q. What business was done on that basis?
A. Practically all of our shipments.
Q. Whether commercial or to states, or states and cities?
A. Yes, sir.
Q. Did your mill at Concrete ship into Bellingham?
A. Yes, sir.
Q. Is Concrete a place where cement is consumed?
A. Very little—I beg your pardon. There was one very large job immediately adjacent to Concrete some ten or twelve years ago right at the town itself.
Q. Are there dealers in the near vicinity of Concrete?
A. Yes, sir.
Q. Does the Olympic Mill or has the Olympic Mill sold to dealers in the vicinity of your mill?
A. They may have; I don't recall.
Q. Do you have dealers in Bellingham?
A. We have not had for a little while.
Q. There was a time when you did have them there?
A. Yes, sir.
Q. Does your Concrete mill do any business in British Columbia?
A. No, sir. You are speaking now in the present tense?
Q. No, I am intending to cover a long period of time.
A. Will you reframe the question please?
Q. Has your Concrete mill done any business, sold
8388 any cement in British Columbia?
A. We have, yes, sir.
Q. To what extent?
A. That was before my time with the company.
Q. In other words, prior to 1925?
A. Prior to 1913.
Q. Is Seattle the largest point of consumption in Western Washington for cement?
A. Normally, yes.
Q. In what proportion would you say the Seattle market represents of the business available to you in Western Washington?
A. Roughly one-third.
Q. Have you made sales direct to the State of Washington?
A. Yes, sir.
Q. To the City of Seattle?
A. Yes, sir.

Q. What is your best price at Seattle for Portland cement.

A. To dealers in cloth $2.30 per barrel stripped. In paper, $2.45 stripped.

8389 Q. Will you translate those figures into figures including the packages?

A. Yes, sir. $2.80 per barrel gross in cloth bags; $2.55 per barrel gross in paper bags.

Q. What is the price to the city?

A. We sell the city of Seattle for its own use on paving work, which includes the street railway department and the city engineering department, at $2.65 gross in cloth; $2.40 gross in paper.

Q. Do you make the same terms or better prices to other towns and cities also?

A. Seattle happens to be the only one which has asked us for that privilege recently. We used to sell others on the same basis. I don't mean on the same prices,—selling direct.

Q. As I understand it, you began the policy of selling on a delivered price basis after the entry of the Northwestern and Pacific Coast companies into the field?

A. Yes, sir, we changed our practice at that time.

Q. What was there in the situation that caused you to change your practice at that time?

A. We found prices, delivery prices, different from what they would have been had the customer purchased from our Concrete, and in order to meet the competition, we went to the delivered price system.

8390 Q. Prior to that time, as I understand it, the purchaser bought f. o. b. Concrete and paid the freight from there?

A. Yes, sir.

Q. That was true of commercial as well as public business?

A. Yes, sir.

Q. Was the Olympic Portland Cement Company also selling on an f. o. b. mill basis?

A. That was our understanding, yes, sir.

Q. You calculated your freight when you began selling delivered, of course, on a rail basis?

A. Yes, sir.

Q. Did the Olympic Company begin selling on a delivered basis at the same time you did?

8391 A. I don't recall that.

By Mr. MacIntyre:

Q. What is the maximum mill net at your two plants at the present time?

A. $2.25 stripped.

Q. That is the same in each plant?

A. Yes, sir.

Q. When the Pacific Coast Company first began business didn't it for a time sell in Seattle or quote in Seattle on a basis of the Concrete mill price plus freight from Concrete to Seattle?

A. That is my recollection, yes, sir.

Q. Although it was located at Seattle?

A. Yes, sir.

Q. What was the amount of the freight per barrel from Concrete to Seattle?

A. About 30c.

Q. Do you know whether or not the freight from Bellingham to Seattle,—what it is?

A. It is the same.

Q. Has the freight from both of these points to
8392 Seattle always been the same, in your experience?

A. No, there is a slight difference. Coming to Seattle from Concrete via the Northern Pacific the rate is higher than if it moves directly Great Northern; but the Great Northern rate from Concrete and Bellingham to Seattle would be the same.

Q. What route do you ship by?

A. We ship over both routes, depending on what line the customer is located on.

Q. Did there come a time when the Pacific Coast Company began to sell—quote in Seattle at less than the sum of the Concrete base price plus freight?

A. Yes, sir.

Q. They had about a 30c per barrel freight advantage over the Concrete mill, is that right?

A. Yes, sir.

Q. Did that cutting first come about in an open way or in a sub rosa way?

A. Sub rosa.

Q. Will you state what form it took?

A. We would be advised by friendly contractors and dealers that they could buy cement cheaper from the new company than they could buy it from us.

Q. How much of a cut took place?

A. It varied; no certain amount.

8393 Q. Did you meet the cuts as you learned of them?

A. Yes, sir.

Q. Was the cutting confined to the Seattle market?

A. No, sir.

Q. Where did it extend to?

A. Practically over the entire territory that we were serving.

Q. Did there come a time when the price cutting came out in the open?

A. Yes, sir.

Q. What were the circumstances that brought that about?

A. I don't recall.

Q. Did the Superior company make an open announcement of the cut?

A. Not—what do you mean, by open price?

Q. Well, as I understand it, you met their various secret cuts as they came along after you learned of them?

A. Right.

Q. I am seeking now to ascertain whether you came out with an open announcement of the cut later on?

A. Well, if you mean by announcement, a newspaper advertisement or circulars distributed to the trade, no, but we advised our dealers of the new prices, as we made them effective, and we met the competition.

Q. How much did the cuts amount to? What was

8394 the price when you started?

A. My recollection is $3.05 gross.

Q. $3.05?

A. Yes.

Q. What was the net shipped mill base?

A. $2.10, I believe.

Q. And how low did the mill base price go in cutting?

A. It dropped down to around $1 at Concrete, net.

Q. You had, I take it, varied the nets, depending on the destination to which the shipments were made?

A. Yes, sir.

Q. What was the range of variation?

A. I couldn't say, sir.

Mr. Zimmerman: Let me interrupt just a moment. I note Mr. Wooden, when he began his testimony or quotation here referred to the maximum mill net. Now he refers to mill base. I don't know whether these two terms are

synonymous as he uses them or not, but I assume the witness is referring to the maximum mill net when he said it dropped down to about $1.10.

The Witness: That is correct, sir.

Mr. Zimmerman: Is that the same as mill base price?

The Witness: We didn't have a mill base price. We didn't have a mill base price then, sir.

8395 By Mr. Wooden:

Q. It has occurred to me that you—

Mr. Little: There has been no testimony about a mill base price. It was just a question of Mr. Wooden where he referred to a mill base.

By Mr. Wooden:

Q. Wasn't your maximum mill net the base on which you figured your prices?

A. Not necessarily; no, sir.

Q. You had a price list?

A. We had a price list for our own use, yes, sir.

Q. You have had since—over a long period of time?

A. Yes, sir.

Q. Aside from those periods of price-cutting, before the Pacific Coast Company was leased, haven't you found that your delivered prices and given destination were the same as the delivered prices of the other mills?

A. Not as a whole; no sir.

Q. Not as you remember?

A. Not as I remember; no, sir.

Q. You remember submitting price lists of your company and other companies from your mill under the subpoena?

A. Yes, sir.

Q. Wouldn't you say that those price lists ordinarily carry the same prices at given destinations?

8396 A. At the same time; yes, sir.

Q. Well, that was the purpose of my question.

A. I didn't understand it.

Q. Understanding it that way, then your answer is what?

A. That at the same time and in the same place and under similar conditions prices would be the same.

Q. At destination?

A. Yes, sir.

8397 Q. In what way do you ascertain what are the delivered prices of your competitors?

A. There are several ways, Mr. Wooden. One is through dealer contacts. We have many dealers who handle cement other than ours. And from public bid openings.

Q. And do you also—

Mr. Little: (Interrupting.) I do not think he has finished his answer.

Examiner Norwood: Have you finished?

The Witness: No. And our salesmen going out to the trade and picking up the prices.

Mr. Zimmerman: Will the witness keep his voice up? It is a little difficult to hear over here.

The Witness: And contractors advise us of prices.

By Mr. Wooden:

Q. You obtain price lists of your competitors, do you not?

A. None of our competitors in this territory issue printed lists, Mr. Wooden.

Q. Are you the only one who does?

A. We do not.

Q. What form is it in?

A. We have a typewritten list for our own use.

Q. When you were in this period of price-cutting
8398 with the Pacific Coast companies, how long did that continue?

A. During 1929, the latter part of 1929, 1930, and the early part of 1931.

Q. And to what point compared to that $2.10 price did the price go during that period?

A. Down to the point where we were realizing on some of our sales; around $1 per barrel for concrete.

Examiner Norwood: Did you have any profit out of that?

The Witness: No, sir.

By Mr. Wooden:

Q. Did the Pacific Coast Company approach you with reference to some settlement of that price cutting situation?

8404 The Witness: I had nothing to do with the lease.

Examiner Norwood: Answer the question, please. Read the question and give a direct answer.

(The question was repeated.)

The Witness: I have no recollection of that.

By Mr. Wooden:

Q. When I say "you", I meant your company and not you individually.

A. Yes, sir.

8405 Mr. Zimmerman: I prefer that your Honor state it in your own way. You said, as I understood it, that it was clear that the witness' statement amounted only to this, that he had no recollection of any approach by the Pacific Coast Company to him, the witness, or to his company.

Examiner Norwood: In the settlement of the price war? Is that right?

Mr. Zimmerman: Exactly.

Examiner Norwood: Is that correct, Mr. Witness?

The Witness: Yes, sir.

8406 Examiner Norwood: The record may show it in that way.

8407 *Redirect Examination by Mr. Wooden.*

Q. When the arrangements were made for the leasing of the Pacific Coast mill, wasn't the prior price restored within a short time?

A. No, sir.

Q. Was there not a substantial increase in price made?

A. Yes, sir; the price did go up, but not as high as it had been before.

Q. How much did it go up?

A. My recollection is to $2.85 gross.

Q. Stripped, how much?

A. $2.20 Seattle.

Q. How did that price compare with the $2.10 price that you mentioned a while ago? That is the price at Concrete of $2.10?

A. That was the price at Concrete, $2.10.

Q. What did it go to at Concrete then?

A. $1.90 net at Concrete.

Q. It had gone how much below that at Concrete?

A. Down to around a dollar net, sir.

Q. Did that increase to $1.90 take place on the occasion of the negotiation or completion of the lease?

A. Yes, sir.

Q. That incurred, did it not, in June, 1931?

8408 A. Yes, sir.

Q. What changes in that price have taken place since then?

A. In January, 1932, due partially to an increase in freight rates, we increased our prices approximately 10 cents per barrel. And in October, 1933, when the freight rate increase went off, we dropped our prices as I recall 15 cents per barrel.

Q. And your present Concrete price is what?

A. Our maximum mill net at Concrete is $2.25.

Q. As against $2.10 before this lease—before the price-cutting war that you have been talking about?

A. Yes, sir.

Q. And as against the dollar during the price-cutting war?

A. Yes, sir.

Q. When you advanced your price at the time the lease was consummated, the other mills also advanced their prices accordingly?

A. We found that out; yes, sir.

8409 Q. Did the Portland Cement Company, Inc., participate in the study of the basing point system con-
8410 ducted by Professors Clark and Burns?

A. Yes, sir.

Q. Did you prepare and submit a questionnaire in that connection?

A. We did.

Q. For both your mills?

A. Yes, sir.

Q. What has been the policy or practice of the Superior Portland Cement, Inc., with reference to selling for delivery to trucks at the mill?

A. Our practice has been to discourage that wherever we could.

Q. In what way have you discouraged it?

A. By advising customers that we preferred not to ship by truck.

Examiner Norwood: Have you refused to ship by truck?

A. We still do make a few shipments by truck. Pardon me. I should not say "we ship." We permit the customers to pick up by truck.

By Mr. Wooden:

Q. The general practice, with those exceptions you refer to, has been not to sell for truck delivery?

A. Yes, sir.

Q. How long has tha. been your general practice?

8411 A. Oh, I think trucks have picked up some cement at our mills off and on ever since there have been trucks.

Q. Well, how long has it been your general practice to discourage it?

A. Ever since we found out that trucks coming in more frequently than they had been upset our packing schedule.

Q. Wasn't one of the reasons you discouraged it that trucks took cement into territory where the delivery price was figured on a rail basis?

A. No, sir; we have not had that experience.

Q. Have you charged the same price for truck delivery as for rail delivery?

A. We usually charge 10 cents a barrel up.

Q. That is more for trucks?

A. Yes, sir. More for trucks than for rail.

Q. Showing you a paper marked 1204 A for identification, do you recognize it as a copy of a letter written by you to the Nassau Lumber Company, July 17, 1931?

A. Yes, sir.

Mr. Wooden: I offer it in evidence, your Honor.

Examiner Norwood: Any objection?

Mr. Little: We have no objection on behalf of the Superior.

8412 (COM. EX. 1204-A was offered and received in evidence.)

Q. Have you at your mills made any practice of charging the delivered price by rail to a given destination, even though trucks called for it at the mill?

A. I don't believe we have.

Q. When the Northwest Company started business in 1928, did it also indulge in price cutting practices similar to those of the Pacific Coast Company?

A. May I ask you, Mr. Wooden, what you mean by price cutting?

Q. Did they, for instance, in selling in Seattle, sell at less than the Concrete price plus freight?

A. They possibly did to get started; yes.

Q. They didn't have near the freight advantage to the Seattle market that the Seattle mill of the Pacific Coast Company did, of course?

A. Yes.

Q. Their mill is located where?

A. Their mill is located at Grotto.

Q. Do you know what the freight rate from Grotto to Seattle is?

A. The same as from Concrete.

8413 Q. In other words, about 30 cents a barrel?

A. Yes, sir.

Q. At the time of that Pacific Coast price-cutting in 1929, '30 and '31 was the—Or, did you sell any cement outside of the state?

A. I think we confined our sales to the same market we had served before that time.

Q. Did dealers from the southern part of the state take advantage of that low price in Seattle to buy cement here and then ship it into Oregon?

A. I have no recollection of their doing that, Mr. Wooden.

Q. Do you remember anything about the Copeland Lumber Company in that respect?

A. No, sir; we had not sold the Copeland until just a few years ago, and they put a yard in locally here.

Q. Was there any condition during that price-cutting war of dealers buying in Seattle and shipping it out of Seattle because of the low price here?

A. My recollection is that the Seattle price and the other prices went down almost simultaneously, which wouldn't make that practice attractive to the outside dealers.

Q. The price in Seattle and in south Washington points go down to a price that was considerably lower than the Oregon prices?

A. I don't remember the Oregon prices.

8414 Q. You don't remember?

A. No, so I couldn't answer.

Q. Did you have calls for shipments to Oregon during that period at your low price up here?

A. I don't recall any, sir.

Examiner Norwood: Do you recall whether you had them?

The Witness: I beg your pardon?

Examiner Norwood: Can you recall whether you had calls?

The Witness: No, sir, I can't.

Examiner Norwood: Get any of them?

The Witness: No, sir.

By Mr. Little:

Q. Do you say you can't recall any?

A. I can't recall that we had any calls from Oregon customers at that time.

By Mr. Wooden:

Q. You have had at other times?

A. Very, very scarcely.

Q. Is the Tacoma area the second largest consuming market in Western Washington?

A. Yes, sir.

Q. What would you say follows that?

A. Going by population of cites, Spokane and
8415 then Everett, Bellingham, Yakima,—not necessarily in that order.

Q. Well, do you sell in Eastern Washington?

A. Yes, sir.

Q. Do you sell to the commercial trade there?

A. Yes, sir.

Q. How long has that been true?

A. Twenty-five years that I know of.

Q. There has been no time at which you did not sell to dealer trade, for instance, in Eastern Washington in the vicinity of Spokane?

A. Not necessarily as far over as Spokane, but in Eastern Washington.

Q. What do you call Eastern Washington? What is the boundary?

A. The territory east of the summit of the Cascade Mountains.

8416 Q. Does that include points like Yakima and Wenatchee?

A. Yes, sir.

Q. And Walla Walla?

A. We have sold in Walla Walla, yes, sir.

Q. Ellensburg?

A. Yes, sir.

Q. Do you get into the Spokane territory?

A. Not consistently, no, sir.

Q. For dealer business. What is it that determines how far you will go into Eastern Washington?

A. The mill net that we wish to receive for business.

Q. Do you maintain your maximum mill net in going over there?

A. I beg your pardon?

Q. Do you maintain your maximum mill net in going over there?

A. No, sir.

Q. In what territory are you able to maintain your maximum mill net?

A. Only in the territory immediately adjacent to the shipping point.

Q. And what is that area?

A. From both mills?

Q. From each mill?

A. From Concrete, not to exceed I will say 40 miles from the mill. Seattle will run down possibly to Chehalis and Cle Elum going east and Everett.

8417 Q. You are able to get your maximum mill net in Everett?

A. Yes, sir.

Q. What is the range in mill net that you obtain from different localities?

A. I have not checked that figure over, Mr. Wooden.

Q. An approximation?

A. Well, it would range from approximately $1.28 upwards.

Q. Up to the maximum?

A. Up to $2.25.

Q. Would you say what the average has been?

A. I would rather not state that, sir.

Mr. Little: I take it that you would rather not, Mr. Tongue, for competitive reasons?

The Witness: That is right, yes, sir.

By Mr. Wooden:

Q. You have certain territory where your maximum mill net prevails, and in that territory I take it other mills compete with you in selling there?

A. Yes, sir.

Q. And when they do, they meet your delivered prices?

A. Yes, sir.

Q. There is other territory, I take it, in which the other mills' maximum mill nets prevail, and when you go into their territory, you meet the same delivered prices that they have in effect?

A. Yes, sir.

8418 Q. As I understand it then, you get a maximum mill net near your mills of $2.10, when you go at a distance, you get as low as $1.28?

A. Yes, sir.

Q. Do you know whether or not the Pacific Coast Company prior to your leasing it, made sales outside of the State of Washington?

A. I do not know.

Q. Has your company participated in any group or divisional meetings of the mills in this locality?

A. Not that I know of, no, sir.

Q. Not at any time over a period of years?

A. During the Code, yes, sir.

Q. Not since then?

A. Not to my knowledge, no, sir.

Q. You continued to file prices with the Institute after the N.R.A. Code went out?

A. For a very short period only.

Q. Some months?

A. Yes, sir.

Q. I am showing you papers marked Commission's Exhibit 1199 A to D inclusive for identification. Do you recogniez that as the record of a meeting of various companies that you attended?

A. Yes, sir.

8419 Q. What were the circumstances under which that meeting was held?

A. I do not recall now, sir.

Q. You see, do you not, that is related to the subject of the adjustment of the freight rates?

A. I judged that just from glancing at it.

Q. Well, it appears that not only you but representatives of the Olympic and Northwestern and the Pacific Coast Company were in attendance. That had some relation to the competitive situation brought about by the entrance of the Pacific Coast Company into the industry here, did it not?

A. I could not say, sir, without refreshing my mind from the document. It has been nearly nine years, I would say, since I saw it.

Mr. Wooden: Your Honor, I will offer that at this time for the record. I might say, Your Honor, in making that offer that those papers were identified by Mr. Milwee of the Commission's staff as coming from the files of the Northwestern Portland Cement Company.

8422 (COM. EX. 1199 A-D was offered and received in evidence.)

8423 GORDON TONGUE, recalled, having previously been duly sworn, testified further as follows:

Direct Examination by Mr. Wooden (Continued)

Q. Mr. Tongue, which were the years in which your ratio of production to capacity at your Concrete mill was the highest that you have named?

A. The ratio of production?

Q. The ratio of production to capacity was the highest?

A 1936 or 1937.

Q. How high did it go during those years 1930 and 1931?

A. Around 50.

Q. And was it increase in Government business that caused the largest ratio during 1936 and 1937?

A. Yes, sir.

Q. How do you arrive at the figure that you set as your maximum mill net?

A. How do we arrive at it?

Q. Yes.

A. We take into consideration competitive factors, including other competitive materials, such as asphalt pave-

8424 ment, brick, etc., and set a price which we thing will not be out of reason and will permit the buyer to purchase and use cement.

Q. Do you know whether your maximum mill nets are the same as the maximum nets of other mills in this locality?

A. Yes.

Q. They are?

A. They are.

Q. How do you know?

A. From checking back prices.

Q. Have you seen at any time in recent years lists of mill base prices that included the mills at Concrete and Grotto, Seattle?

The Witness: If I have, I do not recall them specifically.

Mr. Wooden: Does your company report any price information to the Pacific Coast Cement Institute?

A. Not that I know of, no, sir.

Q. What information if any do you report?

A. This is to the Pacific Coast Cement Institute?

8425 Q. Yes.

A. We furnish them with our monthly shipments.

Q. Nothing else?

A. That is all that I know of, sir.

Examiner Norwood: Do you state the prices in that report?

The Witness: No, sir.

Mr. Wooden: What do you receive from the Institute?

A. Tabulations of shipments similar to that issued by the Bureau of Mines.

Q. Is that the only thing that you receive from the Institute?

A. That is all I have seen.

Q. Haven't you ever received any land grant rate compilation?

A. From the Institute?

Q. Yes.

A. Not that I know of, sir.

Q. How are the delivered prices at Vancouver, Washington made up and what are they?

A. We have an arbitrary price at Vancouver, Washington.

Q. And what is it?

A. I believe it is $2.40.

Q. Has an arbitrary price been in effect there for some time?

A. Yes, sir.

8426 Q. How long?

A. I would say around ten years and possibly longer.

Q. Is there an arbitrary that is used by other mills selling there?

A. I don't know, sir.

Q. When you say it is an arbitrary, do you mean it is

less than the delivered price would ordinarily be if calulated accordiing to your usual way?

A. Yes, sir. It is. It is a price set up by the Superior Company at Vancouver for its customers, and is one that we think will meet the competition in that territory.

Q. How much below the regular price is it?

A. Approximately eighty-five cents.

Q. Per barrels?

A. Yes, sir. May I figure that off the record?

Examiner Norwood: Yes.

The Witness: (figuring) That is okeh.

8427 Q. Is this $2.40 gross?

A. That is the gross price.

Q. Gross in cloth?

A. Gross in cloth.

Q. What competition is it that causes that arbitrary price there?

A. From the Oregon mills and the California mills.

Q. Do the Oregon mills sell into Vancouver?

A. Yes, sir.

Q. And the California also?

A. Yes, sir.

Q. How long has that been the case?

A. Longer than—as far as the Oregon mill goes, since they started in business; as far as the California mills go, longer than twenty-five years.

Q. These other mills have come into Vancouver, that you refer to, that met this arbitrary price of yours?

A. I think it is the other way around. We try to meet their price.

Q. In any event, the prices there are the same?

A. No, sir.

Q. You mean that there is more than one price at a given time in Vancouver by different mills?

A. We have one price. Our competitors have prices, in the same price area.

8428 Q. I know, but are they the same as yours, or different?

A. They are different, sir.

Q. In Vancouver?

A. Yes, sir.

Q. Are they higher or lower?

A. They may be both.

Q. How do you account for that condition there? Isn't that quite different from the conditions at the usual destinations?

A. There has always been a continual strife in that particular area.

Q. With no identity of price at any given time between different dealers?

A. That is true for a large part of the time; yes, sir.

Q. Was one of the reasons for this leasing of the Pacific Coast Mills a desire to get rid of the troublesome competitor?

A. No, sir.

Q. It was a troublesome competitor, wasn't it?

M. Leisure: I object to the form of characterization, if the court please. Every competitor is a troublesome competitor. I don't think it would help the witness to argue on that subject.

Examiner Norwood: I don't think that is arguing with the witness. Objection overruled.

The Witness: May I have the question read to
8429 me, please?

(The question is read by the reporter.)

A. Yes, sir.

By Mr. Wooden:

Q. The most troublesome competitor you had, wasn't it?

Mr. Leisure: Now, I object to that question. What does "troublesome" mean? How does counsel define it? It is not clear. It calls for an answer which is a conclusion of the witness. The witness is here to state facts and not conclusions.

Examiner Norwood: I think it is clear what he means by that.

Mr. Little: How is he to determine what is the most troublesome competitor?

Examiner Norwood: We can go into that. We can find out. Objection overruled. Read the question.

Mr. Wooden: I meant by that, it was the competitor that gave you the most trouble from a price-cutting angle, wasn't it?

A. At that time; yes, sir.

Q. Would your prices delivered in southern Washington, if carried out to a logical distance that the freight would permit, would they put you into Oregon?

The Witness: May I have that question read?

(The reported read the question.)

8430 A. No, sir.

Q. Did you absorb as much freight at any point in Washington as you would if you went into Oregon?

Mr. Little: Do you mean with reference to maximum mill net, Mr. Wooden?

Mr. Wooden: Yes.

A. To answer that question, Mr. Wooden, I would have to know—which I have not in mind—the freight rates from Seattle, say, to points into Oregon.

Q. Well, Portland, say. Do you have that in mind?

Mr. Little: As to the question of absorbed freight, we should have some time, as to what period of time counsel means. Also, whether he means Government jobs or commercial work. I don't just know what he refers to.

Examiner Norwood: I think he is referring to the present time.

Mr. Little: There is no evidence of it, as to the question.

Examiner Norwood: It is in the present tense.

The Witness: May I have the question again?

(Question read by the reporter as follows:

"Did you absorb as much freight at any point in Washington as you would if you went into Oregon?")

A. No, sir.

Q. What is the freight rate to Portland?

8431 A. Approximately 15 cents per hundred weight, as I recall it.

Q. Per barrel?

A. About 49 cents.

Q. What is the freight to Walla Walla?

A. I am not sure.

Q. Do you sell anything in Walla Walla?

A. We have not lately, no sir.

Q. You have quoted and sold, have you not, the Grand Coulee?

A. Yes, sir.

Q. What is the rate there?

A. Commercial rate?

Q. Yes.

A. 34 cents per hundred weight, $1.28 per barrel.

Q. And the special rate on Grand Coulee bids?

A. The special rate is 17 cents, from our mill to Coulee, per hundredweight.

Q. In other words, nearly 70c a barrel, something like that?

A. 65c in round figures.

Q. So on that basis, you would have gotten a little more net in selling in Portland that you got in Grand Coulee?

A. Grand Coulee we sold f.o.b. the mill.

Q. But you had a certain mill net there, too, of course?

8432 A. Yes, sir.

Q. And it was less than might have been obtained in going to Portland?

A. Yes, sir, but the volume was very much greater than Portland offers.

Q. Did you bid on the Bonneville dam?

A. No, sir.

Q. That was a large quantity?

A. It was.

Q. And what was your reason for not bidding on that?

A. Our chemist could not assure us that we could make the quality of cement demanded under the specifications.

Q. Were those specifications higher than Grand Coulee?

A. They were wholly different.

Q. I say, were they higher or lower?

A. Higher in what respect, Mr. Wooden?

Q. Well, I mean more difficult to conform to.

A. Yes, sir, they were.

Mr. Leisure: When you say "Yes, sir" you mean what?

The Witness: Bonneville was more difficult than Coulee.

By Mr. Wooden:

Q. I believe you said this morning you did not sell or quote for delivery into British Columbia?

8433 A. That is right, sir.

Q. Isn't one of your reasons for not going into Oregon or British Columbia the desire to avoid any retaliation by mills there coming into Washington?

A. No, sir. They are coming—the mills from the South are coming into Washington.

Q. From Oregon?

A. Yes, sir.

Q. Do they get into Seattle?

A. They go beyond Seattle.
Q. By water?
A. By rail.
Q. How long has that been the case?
A. Within as recently as the last thirty days.
Q. Well, how long before that?
A. Well, they have been shipping into the State of Washington as long as I have been with the company, Mr. Wooden.
Q. Wasn't there a time some years ago when the Washington mills did not ship into Oregon and vice versa?
A. I think I am truthfully saying there have been Oregon shipments into Washington—not every day, possibly, but throughout the period that I mentioned; and California cement as well.
Q. They come in by water?
A. It comes usually by water, yes, sir, although there have been many rail shipments into Washington from California.
8434 Q. What is the reason that you do not go into Oregon and British Columbia?
A. We have endeavored to maintain an intrastate business.
Q. But you do sell customers for regular and recurring deliveries in Alaska?
A. Yes, we sell them f. o. b. cars Seattle, and the customer assumes all risk of shipment from that point on.
Q. You know at the time that you make the sales that they are for delivery in Alaska?
A. Certainly.
Mr. Wooden: That is all.
Examiner Norwood: Cross-examine.

Cross-Examination by Mr. Leisure.

Q. Mr. Tongue, you were discussing with Mr. Wooden this morning the subject of the capacity of your two mills. I believe at that time you said that the capacity of your mill at Concrete and the Olympia mill was at one time sufficient to supply the demand of the state of Washington?
A. I understood the question to be the western part of the state.
Q. I think that is correct. I think you said they would have been sufficient to supply that demand?

A. Yes, sir.

Q. Would that have been true in 1935 or 1936, that
8435 your Concrete mill would have been able to supply the demand in Western Washington?

A. Possibly in 1935 but not in 1936 or 1937.

Q. Mr. Wooden also asked you a question about whether there was a time when you sold f. o. b. mill at Concrete and at Superior. Do you recall that question?

A. Yes.

Q. As a matter of fact, you sell f. o. b. to the government today, do you not?

A. Yes, sir, we have continually.

Q. At the period of time that you netted only approximately $1 or $1.10 at Concrete, that was only during the price war, is that correct?

A. That is right, sir.

Q. That was known during that period of time as a price war?

A. Yes, sir.

Q. These price lists which Mr. Wooden asked you about, and you said they were typewritten, as I recall?

A. Yes, sir.

Q. Did you give them to the dealers at all?

A. No, sir.

Q. And did you give them to competitors?

A No, sir.

Q. They were for your own use?

8436 A. That is right.

Q. For your own sales?

A. And for our accounting department.

Q. There was considerable discussion about the Pacific Coast Company from which you took a lease. That company is not named in this complaint?

A. That is my understanding.

Q. I bring that out because there are two Pacific Coast companies, and I just wanted to make that clear.

A. The Seattle company is the Pacific Coast Cement Company. The San Francisco company is the Pacific Portland Cement Company.

Q. This company that you were discussing with Mr. Wooden this morning is not a respondent in this case?

A. No, sir.

Q. You were shown an exhibit 1204-A in which it is stated that you will not sell to trucks in small amounts. As

a matter of fact, you were willing, and so stated, to sell to trucks in carload amounts, isn't that true?

A. That is right, sir.

Q. So there was no total discontinuance of selling to trucks?

A. No, sir.

Q. In regard to your commercial sales, Mr. Wooden asked you about a price at the mill. Do you consider
8437 that your mill net is a price in any way or is that simply a base on which you formulate your price?

A. That is the ceiling or top price that we seek to get.

Q. That is not the price that you quote to your customers? I mean your mill net—you do not quote your mill net to a customer, simply the amount you hope to receive?

A. That is true. The carload price at Concrete happens to be identical with the net that we hoped to receive there in carload quantities.

Q. That is merely around the mill?

A. Yes, sir.

Q. But you do not quote your mill net outside of the territory to a customer and not to dealers?

A. And not to dealers, no, sir.

Q. Mr. Wooden brought out that at one time your net in selling at a distance was as low as $1.28 when you went into competitor's territory?

A. Yes, sir.

Q. Do you sometimes sell at a loss?

A. Yes, sir, we do in order to keep the good will of dealers or contractors at the destination point.

Q. This mill at Bellingham, the Olympic, that mill that is owned by British capital?

A. Yes, sir.

Q. And it, of course, sells in Vancouver, does it not?

8438 A. I don't know, sir.

Q. You told Mr. Wooden that you attempted to do business intrastate. Is it or is it not a fact that one of the reasons you do not ship into Oregon is because of the shrinkage of your mill net which would be necessary because of the freight?

A. That is a very important factor.

Q. If it was attractive to you, you would sell in Oregon, would you not, if you could find dealers?

A. Yes, sir. Outside of the intrastate end of it.

By Mr. Leisure:

Q. Mr. Tongue, Mr. Wooden also brought out that there came a time when you changed from an f. o. b. mill price to a destination price. Do you recall that?

A. Yes, sir.

Q. Will you tell us the circumstances under which that was done?

A. After the Northwestern came into the picture in 1928 with a different line of freight rates from Grotto, other than was in effect at Concrete, we found different prices, in other words, the customers were being
8439 quoted f. o. b. destination rather than at the mill plus freight. To simplify our accounting and to meet these prices, as we found them, we adopted the policy of quoting f. o. b. destination. We have followed that practice since.

Q. Did your trade have anything to do with that policy?

A. Many of our dealers, in fact most of them, are interested in the price not at the mill, but at their railroad station where they do business.

Q. Do you use the Institute freight rate book?

A. No, sir.

Q. Do you ship at all, Mr. Tongue, on land grant roads?

A. Yes, sir.

Q. And where do you obtain your rates, the land grant rates?

A. Naturally from the railroads, and we endeavor to check them ourselves as best we can. However, the railroads are reluctant of late to give us much information in regard to figuring the land grant rate.

Q. When you are making sales to the government, such as the Grand Coulee dam, do you make any special rates because of the quantity?

A. We did on Coulee, yes, sir, and we have on other government work.

Q. Was that the $1.28 that you referred to when you were talking to Mr. Wooden?

A. Yes, sir.

8440 Q. Do you recall the amount that you bid, or on what amount you bid on the Grand Coulee job?

A. Around 2,000,000 barrels.

Q. You said this morning that your company charges 10c extra for delivery to trucks?

A. Yes, sir.

Q. Is there any reason for that?

A. Yes, sir. To compensate for the extra expense and time involved in loading trucks.

Q. This morning in explaining that your company discouraged trucking, you said you did it because the delivery to trucks interfered with your packing schedule.

A. Yes, sir.

Q. Will you explain that to his Honor, what you mean by that?

A. We have at our plants, we have bins set aside with certain kinds of tested cement in it, state work, independent laboratories, and Bureau of Standards cement. We may be packing from one of these tester bins when a truck will come along and ask for the standard cement. That will mean one of two things; either we must shut the packing plant down, clean out that bin and get to the standard, or else make the truck wait until it is cleaned out in the normal course of events. These trucks have a habit of coming in at un-Godly hours. One landed last week just about 5 o'clock in the afternoon after the
8441 packing department was shut down. The customer was terribly upset, but there was nothing we could do about it.

Q. What cash discount does your company allow?

A. We now allow 10c per barrel for payment in fifteen days from the date of invoice.

Q. And how long has that practice been in effect?

A. Since the Code went into effect. We also permit some customers to pay twice a month, taking the 10c cash discount.

Q. What was your price in Seattle in 1928 in cloth, do you know?

A. $3.05 gross in cloth.

Q. And stripped?

A. $2.40.

Q. And have you given it to us in paper?

A. I do not recall the paper price because they have varied so over the last ten years.

Q. I think you have told us that this price war continued through 1928. Did it go back that far?

A. It started in the latter part of '28.

Q. Through to 1931?

A. Yes, sir.

Q. What were the new prices that came into effect in Seattle in 1931?

A. $2.85, is my recollection.

8442 Q. In cloth?

A. Gross in cloth.

Q. In paper?

A. It was either $2.55 or $2.60; I am not certain.

Q. Stripped?

A. The stripped cloth would have been $2.20.

Q. What do you mean by "stripped"?

A. Taking off sacks and the cash discount.

Q. How does the price compare in 1928 with the price in 1931 that you have just given us?

A. 20c per barrel less in 1931.

Q. Does your company have any great demand from dealers to use trucks?

A. Practically none. Possibly one or twice a year a dealer will ask for a truck shipment.

Q. Mr. Wooden asked you a series of questions about running at capacity. I don't think you specified any special months or years. Will you explain to the Examiner whether it is possible to run a mill at capacity for the year around?

A. No, it is not, for the reason that we must have at least a month, if you can have it, for repairs and overhauls.

Q. So that figure that you were discussing with Mr. Wooden was purely a theoretical figure as to running at full capacity?

A. Yes, sir.

8443 Q. Mr. Tongue, have you ever operated either of your mills at full practical capacity?

A. Yes, we have for a period of months, but not to the best of my knowledge for a full year or a period of years.

Mr. Leisure: That is all. Thank you.

Mr. Little: Mr. Tongue, I just have a few questions that may not have been asked.

Cross-Examination by Mr. Little.

Q. Mr. Wooden asked you on direct examination about shipments to Alaska. On shipments to Alaska, who selects the carrier beyond Seattle?

A. The purchaser.

Q. What are the conditions of shipment as to risk and liability?

A. The purchaser assumes all risk after the cement is once loaded on the vessel.

Q. And is your only obligation to deliver to Seattle?
A. That is right.
Q. Has that been a continuous practice of the company?
A. Yes, sir, for twenty-five years past.
Q. Just in very round numbers as to percentage, what is the percentage which Alaska shipments bear to your total shipments?
A. I would say not over 2%.
8444 Q. And it has been much less than 2%?
A. Yes, sir. 2% would be the maximum.
Q. You don't know of any year in which it exceeded 2%?
A. No, sir.
Q. And many years was it less than 1%?
A. I would have to go back and check the figures to get that answer definitely.
Q. Mr. Leisure asked you if there had been any considerable demand from dealers for quoting prices f. o. b. mill or making deliveries f. o. b. mill, and you said no, there had not been hardly any. Has there been any protest from your dealers or any dealers with reference to your practices?
A. No, sir, our dealers prefer the rail shipments.
Q. And what is the preference, if any, as to quotation of prices on a destination basis?
A. Dealers and contractors alike ask for delivered prices.
Q. You stated in answer to Mr. Leisure's question that you do not use the freight rate books.
A. No, sir.
Q. I think you testified that to the best of your recollection the Superior Portland Cement, Inc., joined the Cement Institute some time in 1933?
A. Yes.
Q. I think you said June, 1933?
8445 A. Yes, sir.
Q. I take it when you joined in 1933, you never subscribed for any freight rate books or intended making use of freight rate books?
A. That is correct.
Q. You testified with reference to the use of typewritten sheets containing price lists. How many copies of those did you have?
A. We have enough for each of the executives, the

sales staff, and one for the accounting department. Six or seven copies.

8446 Q. Not over seven or eight?

A. That is right.

Q. Have you ever, to the best of your knowledge, sent any price list or information as to your prices in any other form to your competitors?

A. We may have sent information as to individual prices, but not complete lists.

Q. You have already been examined with reference to Exhibit 1204-A, which is a letter dated July 17, 1931, to the Massar Lumber Company with reference to trucking?

A. Yes, sir.

Q. Was the Massar Lumber Company a dealer of yours?

A. Yes, they have been a dealer for nearly twenty years.

Q. Did they make any complaint to you as a result of that letter?

A. Not that I have ever heard of.

Q. You continued to make deliveries to them as a dealer?

A. Yes, sir.

Q. And how have the deliveries of less than carload lots been sent?

A. They have been picked up in trucks but very few—in light truckloads, but very few.

Q. But for the most part, have those been moving by rail?

A. I would say that 99% of the Massar purchases have been rail.

8447 Q. Did you send out any general announcement similar to your letter to the Massar Lumber Company with reference to trucking?

A. Not that I recall, no.

Q. And what was the reason for your permitting delivery to trucks of high early cement at your plant?

A. Because the high early is a sacked product, and it sets very rapidly because of its chemical makeup, sets very rapidly, and in order to give the customers fresh cement we do permit them to take that delivery with 10¢ up price.

Q. And does that interrupt your operations?

A. Not at all. It is just one quality and is not subject to the bin test of the other cement.

Q. Is the use of trucks generally within the state of Washington, and the number of trucks in industry, greatly increased in recent years?

A. Undoubtedly.

Q. And if you were to permit general trucking operations of standard cement from your mill at Concrete or at Diamond, would it be necessary for you to install additional equipment, packing house equipment, in order to satisfy the demands of the customers?

A. Yes, at both mills because neither mill is designed as a truck shipping mill.

Q. When they were originally constructed were
8448 they designed exclusively for railroad operation?

A. Yes, sir.

Q. And is that the most efficient method of operation from the standpoint of your company?

A. We have found it so.

Q. And would the expense of a substitution be such as to make it inadvisable to make this alteration?

A. That is the way we have felt about it.

Q. You stated that your mill net ranges from $1.28 to $2.25?

A. Yes.

Q. The $1.28 I think you stated was your bid on the Grand Coulee?

A. That is correct.

Q. Is that considerably the lowest mill net you have quoted in some time?

A. Undoubtedly, yes. We have had isolated instances of protecting a dealer in a town where he has to have a lower price in order to meet competition, which I believe would go down below that, but there would be very, very few.

Q. Is there any cement trucked into the Yakima territory?

A. Yes, lots of it.

Q. Now, for the information of the Examiner and the Commission will you indicate where Yakima is with reference to Seattle, Spokane and Portland?

8449 A. Yakima is about 160 miles east of Seattle.

Q. Slightly to the south, is it?

A. To the south of the center of the state. I would say approximately 220 or 225 miles from Portland. I don't know the distance from Spokane.

Q. And how large a city is Yakima, roughly?
A. Around 30,000 approximately.
Q. And where is cement trucked from into the Yakima market?
A. It is trucked from Portland.
Q. And do you meet that competition and sell in the Yakima market?
A. We endeavored to meet it by keeping our price as close as possible to the trucking price.
Q. Was there a recent increase in price in Yakima by any company?
A. There was an attempted increase.
Q. And did you meet that increase?
A. No, sir, we did not.
Q. Then what happend?
A. The other company withdrew its price.
Q. How did you find out about the other company making this increase in price?
A. Our dealer telephoned to us or advised our salesman of the increase.
8450 Q. Is that the only way you found out about it?
A. Yes, sir.
Q. Why didn't you increase your price?
A. Because we felt, with cement being trucked in there, there was no sense in raising the price when we were not getting the business that was being offered at the lower price.
Mr. Little: That is all.
Examiner Norwood: Anything further?

Redirect Examination by Mr. Wooden.

Q. When you announced an increase in price, did you announce it to go into effect on a certain period in advance?
A. Never—I wouldn't say that, no, sir. We have no set number of days in advance, since the Code went out.
Q. Was this price you failed to follow in Yakima, was that effective a certain number of days ahead of the announcement or after the announcement?
A. As I recall, what the dealer told me, it was effective immediately.
Q. It had to be withdrawn because you would not follow along?
A. Yes, sir.

Q. What is your net on Yakima business at that time?

A. I believe $1.81.

8451 Q. And what was the amount of the increase that the other company announced?

A. 11¢ a barrel.

Q. If you had followed it it would still have been below your maximum mill net?

A. Yes, sir.

Q. Why was it you didn't do it?

A. Because we felt there was no sense in raising the price when you were having this competition by truck from Oregon.

Q. You were then getting a higher net in your own market at Seattle than you were willing to take over there at Yakima?

A. Yes, sir.

Q. Do you consider that trucking in Yakima is what lowers the price there?

A. No, I would say that is what kept the price there.

Q. You found that trucking, the rates are considerably lower than the rail rates?

A. In some instances, yes, and in other instances the rail rates are considerably lower.

Q. Trucking into Yakima from the mill, how does that compare with railway?

A. The established rates for carriers supervised by the Department at Olympia is not greatly different from

8452 the rail rates.

Q. Which way is it?

A. I think it is lower.

Q. Now, with reference to the information that you provide competitors with as to individual prices, how does this come up?

A. Some of our competitors may ask us what our price is at a certain town.

Q. Do you sometimes ask them what their prices are at certain towns?

A. Yes, sir.

Q. And do you tell them only in cases you do not know whether your prices at that town is the same as theirs?

A. No, sir.

Q. What are the cases in which you do ask for it?

A. A contractor living in Seattle, a good customer of ours, may ask us to get a price on cement in California,

Wyoming or some place where we don't ship to and we will find out for him as an accommodation to him, what the price is there.

Q. Oh, doesn't this apply to the business in Western Washington?

A. Well, we know fairly well, sir, what the prices are in Western Washington.

Q. So you don't need to inquire of your competi-
8453 tors what they are?

A. That is right, sir.

Q. You said something about knowing what the maximum mill net of your competitor was by a process of calculation?

A. Yes, sir.

Q. After you calculated on the basis of some delivered price information do you then consider that that is a fixed mill net that you can count on in other places?

A. Yes, sir.

Q. And, as I understand it then, wherever the freight rates are lower, you meet that delivery price of the competitor whose maximum mill nets, as you understand it, are the same as yours?

A. Yes, sir.

Q. And vice versa. When your delivered price, including freight, and your maximum mill net is less than that of competitors, they meet yours?

A. I assume they do,

Q. Have you made it a practice to sell for Alaska shipment f. o. b. Seattle in order to escape the Federal jurisdiction?

A. No, sir, merely to maintain what we are trying to do in intrastate business.

Q. Isn't that the same thing?

A. I am not a lawyer. I couldn't answer that, sir.

8454 Q. Does the dealer who buys cement for rail delivery, does he assume the risk of loss or damage in transit?

A. Our customers do, yes, sir.

Q. That is the same as your customers in Alaska, in that respect?

A. Yes, sir.

Q. In this capacity figure that you referred to, are they the same ones that you report to the mines?

A. The two-million barrel and one million two hundred

thousand barrels are the same as reported to the Bureau of Mines.

Q. Mr. Leisure brought out that after the price war was settled your price was 20c less than before the price war.

A. Yes, sir.

Q. It was also 90c a barrel higher than the low point of the price war, wasn't it?

A. Approximately that, yes, sir.

Q. Don't you carry on hand ready for loading, Portland cement in sacks, already packed?

A. Never do, no, sir. It is all sacked to order.

Q. You were furnished, were you not, with land grant rates from the Cement Institute during 1936?

A. I believe we did receive some in connection with price filings. I beg your pardon. What year did you say?

Q. 1936.

8455 A. No, that answer is incorrect. There were no price filings in 1936.

Q. But you did get land grant rates during 1936, didn't you, from Mr. Rider of the Institute?

A. I don't recall, Mr. Wooden, of any.

Q. On these Alaska sales that you referred to, did you or the purchaser pay the state sales tax?

A. There is no state sales tax there, sir.

Q. Is there a state sales tax on sales to dealers in Washington?

A. No, sir.

Q. Every time you quote the delivered price you know what your mill net is on that quotation, do you not?

A. I can figure it out, yes. I don't do it, as a matter of fact.

Q. And the mill net is the gross amount that you receive for the sale, is it not?

A. Not the gross amount, no.

Q. Well, I mean it is the amount against which you have to figure your cost?

A. That is right, yes.

Q. You determine, whether you are selling—

A. (Interrupting) Sell at a profit or loss.

Q. And you say you have also quoted f. o. b. the mill to the government, the Federal government?

8456 A. No, I wouldn't say always, but we have continually quoted f. o. b. mill to the government.

Q. Have you arrived at your mill quotation by figuring back from a delivered price basis?

A. Mill quotation to whom?

Q. The government.

A. Will you read me that question, please?

Mr. Wooden: Read it, please.

(The question was repeated.)

The Witness: We have arrived at our mill quotation on government business by figuring a price at our mill that will give us the government, and we have taken into consideration in arriving at that the estimated price and freight rate from competing mills.

Q. You first figure out, do you not, what the estimated price would ordinarily be?

A. Yes, sir.

Q. Then figure back from that to get your mill base quotation?

A. To get our mill base quotation, but that may not be the price we put in.

Q. Now those Grand Coulee bids, you were thinking of a very recent bid, I take it?

A. It is not clear to me what you refer to, Mr. Wooden.

Q. Well, you made some reference to Grand Coulee bidding.

8457 A. The $1.28 price?

Q. Yes.

A. That was the bidding in 1935.

Q. Wasn't there another instance in 1935 where you bid $1.3796 at the mill?

A. Wasn't that the gross price there, Mr. Wooden, less discount—subject to discount?

Q. It is simply given here as "bid price". I am referring to a photographic copy of 112-D. Perhaps you can tell me from that.

A. There was a discount of 10c off of that. That is right.

Q. Making $1.2796?

A. That is correct. That is the figure I referred to when I said $1.28.

Q. Was there a delivered price on file for that bid with the Institute from which you calculated your mill prices?

A. Mr. Wooden, I had very little to do with the Grand Coulee bid. If there was—there may have been. I don't just recall.

Q. I notice your bid in that instance worked out on a delivered basis the same as the Spokane and the Lehigh Companies?

A. I think that is correct, sir.

8458 Q. Do you know what the maximum mill net of the mills that Irvin and Mettaline Falls is at the present time?

A. The maximum mill net?

Q. Yes.

A. I think Irvin is $2.75 gross and Mettaline $2.35 gross.

Q. Both in cloth?

A. Both in cloth, yes.

Q. Do you calculate your prices in the middle Washington, the Yakima territory and so on, on that basis?

A. Yes, sir.

Mr. Wooden: Nothing further.

Cross-Examination by Mr. Leisure.

Q. Mr. Tongue, in discussing with Mr. Wooden just now about the Yakima Valley, you said that you did not follow the price rise because you feared trucking.

A. From Oregon.

Q. Was it the fact that you feared the trucking or that you feared that they would not go along with the price rise?

A. I think the latter would be a more correct answer.

Q. On your terms of cash discount, you said that since the code, that you gave ten cents a barrel, is that correct?

A. Yes, sir.

Q. Prior to that time did you allow a cash discount of two per cent of the full amount of the invoice?

8459 A. No, sir, prior to that time it was 25c per barrel discount to dealers, ten cents highway contractors, and for payment within ten days instead of the present fifteen days.

Q. If the invoice stated a definite price including freight, was it your former practice to allow two per cent cash discount on that?

A. No, sir, we never had the two per cent.

Mr. Leisure: That is all.

Cross-Examination by Mr. Little.

Q. Mr. Tongue, you were testifying comparing the rates by truck and by railroad carrier. Is it not a fact that recently trucks have come under the jurisdiction of the Department of Public Service under the Public Carriers Act?

A. Yes, sir. I believe within the last year and a half.

Q. And for the first time, is it not true that rates are being promulgated by the Department of Public Service with reference to trucks on public highways?

A. That is true, yes, sir.

Q. And from time to time, hearings are being held to fix the rates that shall be applicable?

A. Similar to the regulations that the railroads have.

Q. It is therefore more difficult to estimate what the trucking rates might be in months and years to come as compared to railroad carrier rates, is it not?

8460 A. I would say they are going through the same chaotic period of formation that rail rates went through.

Q. What has been your experience with reference to truck rates and railroad carrier rates on long hauls?

A. The rail rates are very much better for us, that is, they are cheaper than the truck rates.

Q. When you say "for you," would that also be true of your customers?

A. Our customers as well.

Q. Assuming that truck rates and rail rates were equal, are there any factors that would make one form of transportation preferable to you and to the customer?

A. Well, from the Company's standpoint, we would much prefer the rail mode of transportation.

Q. Why?

A. Because it is easier to handle at the plant. You are not subject to interruptions and inconveniences, you are shipping out a continuous flow of cement and when you are through packing a full car load of a tested type of cement you are through, and with trucks it would be spotted.

Q. Would there be less harassments and inconvenience to a customer and to yourself?

A. Considerably less with the rail.

Q. Is there a probability that the condition of the cement would be greater protected by rail shipment than by
8461 truck shipment?

A. That of course would depend on the kind of trucks. If they were specially made trucks, they might get through with less trouble than the railroad cars.

Q. Now, Mr. Tongue, you were testifying with respect to shipments to Alaska, stating that the risk of shipment was on the customer. You quote an f. o. b. Seattle price on all Alaska shipments, you testified f. o. b. car on dock, Seattle, on the theory that that is your destination?

A. That is correct.

Q. Whereas in the case of all shipments other than shipments on public bidding, Government bidding, you quote a destination price within the state.

A. That is true of rail shipments. We do ship some by water across the Sound where we sell f. o. b. car, Seattle.

Q. I am speaking of rail shipments.

A. For rail shipments, that is correct.

Mr. Little: That is all.

Examiner Norwood: When you sell by truck, the title passes—

Mr. Wooden: (interrupting) When the cement is loaded in the truck.

Redirect Examination by Mr. Wooden.

Q. In your question as to Clark & Burns, you did
8462 not state all of these objections to trucking, did you?

A. I do not recall what we stated in there. That was a mess as far as I am concerned.

Q. You were called on in that questionnaire to state all of the objections that you had as to trucking, were you not?

8464 The Witness: I don't recall, Mr. Wooden. I have not looked at the questionnaires at all since it went out.

Mr. Wooden: Who did this trucking into Yakima that you are referring to?

A. Some of the dealers down there had the cement brought in.

Q. And you did not go along, as I understand, with the proposed increase, because you feared the trucking would prevent the increase sticking?

A. No, that if the price increase went in, that the other companies might not follow it and we would be out of the business, and we decided not to go up on our price.

Examiner Norwood: The trucking militated against the raise in price, did it not?

A. As far as we were concerned, yes, sir.

8465 By Mr. Wooden:

Q. Did you think that the proposed price increase might also increase the trucking into Yakima?

A. That would very likely follow?

Recross Examination by Mr. Leisure.

Q. The Examiner just asked you that you state your conclusion as to whether trucking militated against the raise in price, and you said, "As far as you were concerned." Would it have made the slightest difference to you whether it was by rail or by truck if the other companies did not follow your price when you raised it?

A. That is correct.

Q. Or by water or any other method?

A. That is correct.

Q. Was trucking by any means the criterion which caused you not to raise your price?

A. In this instance, it was the trucking which had the effect on our not following the other price up.

Q. In response to one of my questions before you answered the Examiner's question, I asked you whether or not it was the trucking you feared or whether or not it was because you feared they would not follow in the price.

Do you want to change that answer now and say
8466 that it was the trucking you feared rather than you feared they would not follow in price?

A. The reason we did not raise our price was because we felt if we did the truckers or those people buying cement by truck would not raise their price and we would be out of the business, and we decided that it was the best policy and the best practice to let our price stay where it was.

Mr. Leisure: That is all.

H. L. KNAPPENBERGER, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

I am vice-president, general manager and sales manager of the Oregon Portland Cement Company. The head
8467 office is located at Portland, Oregon, and the mills at Oswego about eight miles south of Portland and at Lime about 385 miles east and south of Portland near the eastern border of Oregon. The mills do business in practically the entire State of Oregon, southwestern Idaho and south and eastern Washington. The Washington territory has been covered for about eleven years.

Q. What is the maximum mill net of your two mills?

A. The maximum mill net at Oswego is $1.80 and at Lime $2.20.

8468 Q. And what territory does the Oswego mill maximum net make the delivered price?

A. I would say south as far as Klamath Falls and west to Astoria and east to Walla Walla.

Q. And north?

A. North to Vancouver and points along the Columbia River.

Q. Do you sell for delivery to trucks at your mill?

A. Yes, sir.

Q. Are those trucks operated by dealers or who?

A. Everybody.

Q. Are the trucks gotten up into the Yakima territory?

A. No Oregon trucks as far as I know. They are all trucks from Yakima or that part of the country that haul produce or materials to Portland and take back a load of cement.

Q. Have you changed your maximum mill net at Oswego lately, what has been the record?

A. That last change was made on the first of October, 1937.

Q. And was that a reduction?

A. Yes, sir.

Q. How much?

A. 20c.

Q. How long had the previous price been in effect?

A. I could not say definitely.
Q. A matter of some years?
A. Yes, I would say at least two if not three years.
8469 Q. And that previous price was what?
A. You mean the mill net?
Q. Yes.
A. $2.00.
Q. Did the trucking into Yakima accompany this 20c reduction? that you referred to?
A. The cement that we sell to trucks in Yakima is sold f. o. b. our warehouse in Portland.
Q. Yes, but did the trucking of that cement into Yakima accompany that reduction in the price?
A. You mean by that question whether the price was made effective with the truckers close to Yakima when the reduction was made?
Q. I want to find out when the trucking to Yakima from your mill began with reference to the reduction in your price?
A. Prior to October first. Prior to this last 20c barrel reduction. Not in any quantities, but since the reduction of 20c a barrel last October, it has been increasing.
Q. It was not very long before October first that you mentioned?
A. No, not very long.
Q. Your company is a member of the Cement Institute?
A. Our resignation is in at the present time.
Q. How long have you been a member?
A. A short time before the NRA, the Code Authority.
9470 Q. In 1933?
A. Yes.
Q. Does your company belong to the Pacific Coast Cement Institute?
A. Yes.
Q. How long have you been connected there?
A. I should say about two years.
Q. What are the functions of the Pacific Coast Cement Institute as you have found them?
A. Insofar as we are concerned, we get a lot of literature and fresh clippings and one thing or another that we otherwise might not read.
Q. You pay out money for that?
A. Oh, very small amount.

Q. Do you furnish the Institute on the Pacific Coast with information regarding some of your business affairs?

A. Absolutely not, other than our shipments for a basis of assessing our dues.

Q. Do you get information on the same sort of thing back from the Institute in combining the figures for various mills?

A. They are copied from the Bureau of Mines.

Q. Have you received any price lists from other members of the Pacific Coast Cement Institute?

8473 The Witness: We have received price lists from other Pacific Coast Cement Companies, but I don't know whether they were members of the Pacific Coast Cement Institute or not.

By Mr. Wooden:

Q. They are the companies that come up into your territory around your Portland Mill?

A. Yes, sir.

Q. Can you name some of them?

A. The Santa Cruz, the Portland Cement Company, and previously the Henry Cowell Lime & Cement Company I think is the correct name of the company.

Q. Do you get lists from the Calavaras?

A. No.

Q. Or the Pacific Coast?

A. Not since the Code. During the Code we had the price list of the Pacific Portland Cement Company, but not since the Code.

Q. Do you get them from the Riverside?

A. During the Code.

Q. Not since?

A. Not since, no sir.

8474 Q. Do you exchange your list with those parties?

A. We do not. We did during the Code period.

Q. Do you exchange your lists with any of the mills to the north?

A. No, sir.

Q. Will you state what the interest of your company is with Mr. Boettcher of Denver?

A. Our company has no interest with Mr. Boettcher's company whatever.

Q. Does he have any stock interest in your company?

A. Does he?

Q. Yes.

A. Yes, sir.

Q. What is the extent of that?

Mr. Leisure: Your Honor, I do not think that is relevant or material to any of the issues in the case, the stockholders in the company.

Examiner Norwood: Is this company a respondent about which you are inquiring now?

Mr. Wooden: Yes, the Ideal Cement Company is Mr. Boettcher's company in Colorado.

Examiner Norwood: Objection overruled.

Mr. Leisure: The Ideal Company is not a respondent, Your Honor. We are getting very far afield here getting into stock ownership.

8476 The Witness: I could not say definitely about the exact amount. It is a very nominal amount that he has in the company.

Q. Is there any representation of Boettcher's interests on the Board of Directors of the Oregon company?

A. Mr. Boettcher is a director himself.

Q. That is, Mr. Boettcher, senior?

A. Senior.

Q. Is there some stock interest in the Oregon company of interests which are connected with the Southwestern Portland Cement Company of Los Angeles?

8477 The Witness: I could not answer that question. I don't know whether they are or not. It is not in the name of the Southwestern, and no stock in the name of any of its officials.

By Mr. Wooden:

Q. Is there an interest in your company held by the C. Leonhardt Company?

A. Who?

Q. Leonhardt, L-e-o-n-h-a-r-d-t?

A. No. There is some stock owned by the Leonhardt Improvement Company, I think the name is.

Q. Is that a Los Angeles concern?

A. Yes.

Q. Do you know whether it has any relation to the Southwestern Company?

A. I do not know.

Q. What is the range of mill net that your company mills obtain?

A. At the Oswego plant, a maximum of $1.80 to about $1.50, and at the Lime plant, about $2.20 to $1.20.

Q. Did your company build the Lime plant for the
8478 purpose of supplying largely the Federal project on the Owyhee River?

A. I am not informed on that.

Q. You have drawn considerable business from the Owyhee project?

A. Very much.

Q. Are you sometimes known among your friends and acquaintances as Knapp instead of Knappenburger?

A. Quite often.

Q. Do you know Mr. R. E. Bristol?

A. Who?

Q. R. E. Bristol of Salt Lake City?

A. R. E.?

Q. Yes.

A. Is that Ralph Bristol?

Q. Yes.

A. Yes.

Q. Do you know Mr. Maxfield of Idaho?

A. I did know him, yes.

Q. Do you know Mr. Day, of Salt Lake?

A. I did know him when he was alive.

Q. Harold and C. A.?

A. Yes.

Q. And do you remember an occasion when you met with those gentlemen in Salt Lake City some years
8479 ago to discuss the Owyhee and other projects, the Deadwood dam and Manadoke?

A. I don't remember meeting with them in Salt Lake City, no, sir.

Q. Did you meet with them at any point?

A. Not to discuss those matters, no, sir.

Q. Did you meet with them during May, 1930?

A. That I could not say.

Q. Showing you exhibit marked for identification 1197. This was identified by a representative of the Commission as a paper from the files of the Utah-Idaho Sales Agency, Mr. Bristol. I will ask you to look at that and say whether that does not refresh your recollection about attending a meeting with those gentlemen about that time?

A. That does not make sense to me what it is supposed to be. (Examining paper.)

Q. Are not the figures that are contained there opposite the letter "L" on the Deadwood and Manadoke, aren't they the figures that you quoted?

A. I could not say without referring to our files. If they were, we were at least consistent.

Q. What do you mean by that?

A. The same price.

Q. The same price as what?

A. The same price as each one of them.

Q. Showing you now papers consisting of ex-
8480 hibits 1196-F and -G, a letter to Mr. Enloe of the Idaho Portland Cement Company containing the figures that you quoted on those two projects, Deadwood and Manadoke, aren't they the same as on the paper that is marked 1197?

A. (Examining) Assuming that this is the price that we bid here, the $2.65? (Indicating)

Q. Yes.

A. They are the same.

Q. Well, now, don't you remember having met with those gentlemen about that time?

A. I do not. I met them several times, but whether I met them on this particular day, I don't know.

Q. I am not asking you about the particular date. Didn't you meet with them at one time and discuss these bids?

A. Not to my recollection.

Q. Did you ever obtain or was a copy of this paper or a duplicate of this paper, Exhibit No. 1197, ever sent to you?

A. No, sir, I never saw it; this is the first time I have seen it.

Q. Or anything like it?

A. Nothing like it at all, other than that if this is a copy of the bids submitted, I have a transcript of the bids of this (indicating) and this (indicating) and this (indicating).

M. Wooden: Your Honor, I want to renew the
8481 offer made of this paper at this time, Exhibit No. 1197.

8482 Examiner Norwood: The following papers, which are marked for identification, as stated; but consisting of papers received under the subpoenaes duces tecum and proffered as heretofore shown in the record, are now received in evidence.

Mr. Leisure: So we may not be confused, your Honor, as to these exhibits, is that part of the five thousand offer that was made in Washington?

Examiner Norwood: I wouldn't say there was just five thousand, but there was a large number.

Mr. Leisure: A large bulk.

8484

1097-A	1097-B	1097-C
971-24V	549 (2e)	549 (u)
549 (v)	549 (r)	549 (t)
549 (s)	549 (q)	823 (a)
549 (p)		576 (6t)
549 (n)	549 (o)	549 (m)
877 (g)	549 (l)	834 (e)
549 (2h)	549 (2g)	549 (j)
549 (i)	547 (k)	547 (l)
547 (i)	547 (j)	547 (h)
549 (g)	549 (f)	549 (2c)
879 (a)	879 (b)	547 (b)
547 (a)	914 (g)	914 (f)
954 (u)	427 (bb) and (cc)	947 (16l) to (16p)
562 (15h)	562 (15i)	645 (e) and (f)
645 (g) to (m)	645 (d)	645 (c)
645 (b)	645 (a)	914 (e)
549 (3g)	731 (6g)	549 (2f)
549 (3e)	549 (3c)	549 (3a)
549 (2l)	549 (2m)	549 (3p)
581 (f)	736 (a) and (b)	736 (c)
547 (g)	547 (f)	867 (7e)
867 (7d)	867 (7x)	731 (6f)
731 (6e)	421	549 (4n)
737 (ww)	819 (bb)	643 (b) and (c)
870 (2b)	873 (c) and (d)	873 (e) and (f)

8485

873 (g)	731 (4f)	873 (m)
549 (4m)	813 (v)	549 (4i)
549 (4k)	549 (4l)	886 (d)
819 (aa)	819 (x)	873 (i)
832 (g)	832 (f)	832 (e)
832 (d)	832 (c)	813 (bb)
415 (373)	867 (7w)	867 (7v)
816 (d)	813 (ee)	549 (4t)
947 (10b)	947 (10a)	549 (4u)
546 (2o) and (2p)	914 (j)	415 (50)

914 (i)
947 (10h)
546 (21)
933 (7p) and (7q)
549 (5c)
867 (7h)
933 (5d)
877 (m)
731 (4u)
832 (b)
547 (2c)
547 (y)
867 (7t) and (7u)
547 (u)
415 (366)
415 (49)
947 (10z)
546 (2k)
415 (39)
549 (4y)
867 (7i)
415 (32l)
877 (i) and (j)
415 (374)
874 (oo)
547 ((2i)
547 (2b)
867 (7s)
547 (t)
415 (367)
947 (10f)
947 (10y)
562 (7s) and (7t)
415 (40)
549 (4z)
933 (5e)
877 (n)
731 (4v)
736 (d)
547 (2d)
547 (2z)
547 (2a)
547 (v)
549 (6b)
415 (368)

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415 (545)
549 (5x)
740 (d)
836 (2x) and (2y)
836 (2r)
836 (2o)
836 (t)
836 (1)
836 (3p) to (3r)
576 (2p)
553 (2y)
950 (b)
950 (p) and (q)
950 (f) and (g)
882 (6w)
553 (3g)
571 (5e) and 5f)
439 (a) and (b)
571 (5c) and (5d)
937 (2d)
571 (r) and (s)
578 (6t)
433
886 (s) and (t)
547 (m)
836 (2u)
836 (2v)
836 (2p)
836 (2q)
836 (2e) and (2f)
730 (h) and (i)
576 (2o)
553 (2x)
950 (i) and (j)
821 (4x) to (4z)
950 (n) and (o)
882 (6x) and (6y)
571 (a) to (d)
950 (s) to (u)
882 (6p) and (6q)
937 (2f)
571 (t) to (2b)
937 (ww) and (xx)
870 (15a) and (15b)
916 (g) to (j)
547 (p)
577 (y) and (z)
836 (2w)
836 (2n)
836 (2m)
836 (2b)
836 (3s) to (3v)
836 ((3m) and (3n)
553 (2z) to (3e)
950 (e)
950 (r)
821 (5a) and (5b)
553 (x) to (2c)
950 (h)
821 (4w)
440
553 (3f)
937 (2e)
937 (2c)
578 (6r) and (6s)
870 (15c) to (15e)
434

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435
938 (y) and (z)
436
958 (f) and (g)
437
938 (2a)

553 (2n)
958 (m) and (n)
971 (b) and (c)
958 (v)
958 (y)
971 (g) and (h)
571 (k)
971 (j)
971 (s) to (2r)
953 (2w)
953 (3g) and (3h)
941 (s)
956 (3p)
971 (4h)
971 (4q) and (4r)
817 (6g) to (6i)
966 (h) and (i)
971 (5x)
971 (7e)
971 (7m)
971 (7s) and (7t)
971 (29t) and 29u)
963 (g) to (q)

950 (x) and (y)
958 (j) to (l)
953 (n)
953 (p)
971 (28f) and (28g)
958 (2p)
953 (w)
571 (2y) and (2z)
971 (2t) to (2x)
971 (3b) and (3c)
953 (3r)
571 (3a) and (3b)
956 (3q) to (3v)
971 (4j)
971 (4s) to (4u)
971 (5d) and (5e)
966 (cc)
971 (6u) and (6v)
971 (7f) and (7g)
965 (a) and (b)
971 (7y) to (8a)
971 (9a) to (9c)
971 (10e)

953 (e)
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953 (2r) and (2s)
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953 (3i) and (3j)
958 (2q) and (2r)
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971 (5q)
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971 (6z) and (7a)
971 (7l)
962 (c) and (d)
971 (8n)
971 (9h) and (9i)
913 (6h)

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971 (29h)
971 (10p) and (10q)
971 (30d) and (30e)
971 (11g)
971 (11n) and (11o)
971 (11y)
971 (12i) and (12j)
971 (30n)
971 (13d)
971 (13r)
956 (5r)
971 (15a) and (15b)
971 (31u)
971 (16b) and (16c)
562 (b) to (j)
971 (17p) and (17q)
971 (32n) to (32s)
971 (18m)

971 (31x)
971 (10v)
971 (30g) and (30h)
971 (30i) to (30k)
963 (r)
971 (12c) to (12f)
971 (12k) to (12m)
971 (13c)
971 (13h)
958 (3c) to (3e)
971 (14u)
971 (15e) to (15g)
956 (14y) and (14z)
971 (30z) and (31a)
971 (31v) and (31w)
971 (17t) and (17u)
971 (17z) and (18a)
971 (18x) to (18z)

971 (10l) to (10n)
971 (10x) to (11d)
971 (29g)
971 (11L)
971 (11s) to (11u)
971 (12g) and (12h)
971 (30m)
971 (30p) and (30q)
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958 (3i) to (3k)
971 (16a)
956 (15c) to (15e)
971 (17n) and (17o)
971 (32c)
971 (18i)
956 (18p)

971 (19d)
971 (20v)
971 (31q)
971 (22y)
958 (4o) and (4p)
571 (2o)
913 (4a) to (4e)
971 (19v)
971 (20z) to (21b)
913 (4h) and (4k)
971 (22z)
571 (2l) to (2n)
958 (4t) and (4u)
971 (23f) and (23g)
971 (20k) to (20m)
958 (4a) to (4i)
971 (22x)
971 (23a) and (23b)
913 (3q) and (3r)
913 (3s)
971 (23i) and (23j)

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971 (23n) to (23s)
971 (24e) to (24g)
958 (5c) and (5d)
958 (5a) and (5b)
971 (25p)
882 (4v)
971 (26r)
887 (4s) and (4t)
958 (5m)
971 (27e)
971 (27k) to (27n)
419 (b)
971 (28h) to (28k)
964 (h)
971 (28t)
958 (6h)
971 (34p)
812 (H) and (I)
534 (J)
534 (F)
583 (B)
971 (23u) and (23v)
971 (24h) and (24i)
958 (4w) to (4z)
971 (25l)
971 (25q)
971 (25e)
958 (5f) and (5g)
958 (5j) and (5k)
958 (5n)
958 (5p)
913 (2l) and (2m)
419 (h) and (i)
971 (28l) to (28n)
971 (28r)
913 (w)
913 (d)
971 (33l) to (34c)
885 (2A)
534 (I)
534 (B)
586 (4L) to (4N)
562 (3w) and (3x)
971 (24l) and (24m)
971 (25m) and (25o)
913 (2w) to (2y)
971 (32u)
913 (2s) and (2t)
958 (5l)
888 (21)
971 (27g) and (27h)
913 (2d)
971 (28d)
419 (a)
971 (28o)
913 (v)
971 (29d)
534 (H)
534 (E)

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835 (z)
947 (h) and (i)
947 (b)
947 (9i) to (9k)
947 (v)
831 (h) and (i)
820 (h)
947 (13a)
919 (3e) and (3f)
734 (h)
947 (d) to (g)
947 (o)
947 (s)
831 (l)
947 (10c)
855 (2z)
948 (2a) and (2b)
562 (71)
822 (c)
947 (e)
548 (3b)
947 (r)
831 (j)
947 (10e)
947 (13b)
837 (a) to (l)
562 (7k)

885 (6s)
879 (U)
879 (S)
879 (V)
963 (H) to (Q)
874 (L) to (Q)
585 (T) and (U)
585 (CC) and (EE)
799 (7p)
924 (5r)
812 (s)
415 (22)
885 (2q) and (2r)
562 (10Q) and (10R)
879 (X)
963 (Z)
971 (9Q) and (9R)
874 (S) and (T)
919 (B) to (E)
919 (2I) to (2L)
799 (6y)
415 (41)
415 (27)
574 (m) and (n)
879 (T)
879 (W)
963 (2A) and (2B)
971 (9L) to (9P)
879 (PPP)
919 (M)
422 (M) and (N)
799 (21)
573 (l)
415 (28)
553 (2m)

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553 (2l)
942 (b)
954 (2h)
571 (4h)
575 (i)
562 (16g)
425 (d)
947 (10m)
948 (d)
948 (f)
948 (j)
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933 (7i)
925 (4t) to (4z)
925 (6a) to (6k)
495 (a) and (b)
883 (2i)
562 (12h) to (12n)
562 (14v)
562 (9t) to (9x)
562 (10e)
844 (k)
500 (h)
942 (c)
553 (5z) and (6a)
571 (4g)
575 (g) and (h)
562 (16f)
425 (c)
947 (10k)
948 (g)
948 (i)
937 (d) and (e)
933 (7j)
925 (5a) to (5c)
870 (15h) and (15i)
883 (2k) to (2n)
562 (11j) and (11k)
562 (12x) to (13t)
562 (15b) to (15d)
562 (9j)
562 (10d)
844 (l)
500 (g)
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500 (b) and (c)
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575 (a) and (b)
562 (16j)
947 (10l)
947 (10j)
879 (bb)
948 (h)
933 (7h)
925 (8v) and (8w)
925 (5s) and (5t)
562 (14r)
883 (2g) and (2h)
562 (12c) and 12d)
562 (14h) and (14i)
562 (90)
562 (10c)
844 (m)

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844 (n)
576 (s)
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576 (w)
797 (w) to (z)
846 (2p)
576 (4q)
576 (t)
576 (q)
576 (v)
828 (6t) to (7h)
846 (2c)
576 (4p)
576 (r)
576 (5h)
847 (a) to (c)
427 (k)
855 (5i)

427 (1) to (t)
877 (b)
947 (11m) and (11n)
947 (13c)
731 (12u)
866 (3z)
947 (11g)
855 (3n)
731 (12t)
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415 (572)
424 (d)
424 (a)
424 (g)
549 (2b)
896 (a) and (b)
545 (4m)
644 (k)
551 (a)
417 (b)
417 (g)
417 (j) and (k)
477 (o)
417 (r) and (s)
417 (t)
874 (n)
947 (9l) to (9o)
417 (aa) to (dd)
947 (14f)
417 (jj)
418 (a) to (d)
415 (573)
424 (c)
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549 (y)
933 (7r)
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417 (a)
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417 (v)
417 (w) and (x)
874 (s) and (t)
417 (y)
417 (ff)
417 (hh)
947 (14e) to (14g)
417 (ii)
870 (13n) to (13r)
415 (574)
424 (b)
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549 (2a)
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747 (d) and (e)
417 (d)
417 (h) and (i)
417 (m)
417 (p) and (q)
417 (u)
874 (hh)
813 (x) and (y)
417 (z)
417 (ee)
571 (4w)
947 (14y)
947 (15e)
867 (u) to (y)

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551 (j) to (3n)
418 (g)
427 (g)
546 (c)
546 (k)
576 (5t)
545 (6q)
933 (2s)
933 (l)
640 (k) and (l)
839 (4k)
585 (kk)
735 (a)
553 (6v)
806 (3e) and (3f)
870 (13b) to (13d)
922 (b) to (ggg)
546 (q)
546 (m) and (n)
750 (g)
576 (5s)
546 (2i) and (2j)
719 (a)
845 (n)
640 (a) to (j)
817 (g) and (h)
562 (15w) and (15x)
954 (i) and (j)
935 (b)
800 (2u) to (2x)
418 (e) and (f)
546 (p)
546 (l)
750 (a)
422 (o)
933 (3c) and (3d)
933 (m)
562 (6w) to (6y)
817 (k)
817 (i) and (j)
735 (b)
954 (k) to (m)

8495 Seattle, Washington,
Wednesday, June 29th, 1938.

8497 MR. H. L. KNAPPENBURGER, previously sworn on behalf of the Commission, resumed his testimony.

Direct Examination (Continued) by Mr. Wooden.

Q. Mr. Knappenburger, referring to Commission's Exhibit No. 1197 for identification, can you tell me whether the initials appearing on opposite each line of figures are the initials of mills, and if so, the location of the mills?

A. I believe they are.

Q. What are the mills of which the initials appear?

8498 A. "I" would be Inkom, Idaho; "L" would be Lime, Oregon.

Q. That is your mill?

A. Yes. "B" would be Bakers, Utah; "DS" would be Double Slide, Utah; I don't know what the "LL" would be. I presume that should be "SL", should it not? Salt Lake?

Q. I don't know. It is "SL" in one place. Now, looking at the figures themselves on these various projects, Deadwood, Monodoke, Salt Lake and Owyhee, how would you translate those figures in terms of cement prices and terms of delivery costs?

Examiner Norwood: You testified of your own knowledge and experience with regard to the meaning of

8499 those initials, did you not?

The Witness: The first column at the top has the words spelled out. At the top initial it is written in with pencil.

Mr. Wooden: Those are the initials of mills located at various places, and those are projects on which your Company submitted bids, are they not?

A. I presume so, yes. I could not say definitely without checking our own records.

8501 Q. Did you submit this from the Deadwood project?

A. Yes, sir.

Q. In 1930?
A. I presume it was that year, yes.
Q. And the Minidoka?
A. I can't recall that.
Q. The Owyhee, did you bid on that?
A. Yes.
Q. The Salt Lake Project?
A. Not that I recall.

Mr. Wooden: Now, your Honor, I again offer this exhibit.

Mr. Leisure: I contend that no proper foundation has been made and it is purely not admissable at this time. He asked Counsel what it was. It has not been identified. It was marked for identification by Mr. Milwee, as having come from some file.

Mr. Wooden: Yes, he testified to that.

Mr. Leisure: And it has come from the file of the non-respondent, and there is nothing on the paper to indicate what it is. Unless there is somebody who can tell us what it is, throw some light on it—

Mr. Wooden: I am offering it as in the nature of
8502 a piece of circumstantial evidence, that may be considered with all the other facts that are in the record, including the exhibits which describe the submitting of bids, in correspondence with those figures there on two of those projects, documents from the files of the Idaho Portland Cement Company, to show that bids were submitted in accordance with those figures on two of those projects, and describing the circumstances.

Mr. Zimmerman: This came from the files of the Idaho?

Mr. Wooden: No, it did not; from the files of the Utah-Idaho Agency, which was one of the bidders on these projects.

Mr. Leisure: But not this one.

Mr. Wooden: That is right.

Mr. Leisure: How is this tied up with any of the Respondents.

Mr. Wooden: The exhibit which I referred to of the Idaho Portland Cement Company are in evidence, received in Chicago, they describe the submission of bids, the actual submission of bids in accordance with the figures there on two of those projects, and participated in by two Respondents, I believe the Idaho and the Oregon.

8503 Examiner Norwood: What I want to know is how does this add to the testimony of the other Exhibits?

Mr. Zimmerman: Not at all.

Mr. Wooden: It shows, your Honor, that prior to the filing of the bids which are described and set forth in the other Exhibits, that this record was made of a meeting attended by these parties.

8505 Examiner Norwood: Doesn't some degree of relevance attach to the fact that it might show effect and results of activities shown elsewhere on the part of some of the Respondents?

Mr. Zimmerman: If your Honor please, we haven't reached that point yet. We haven't passed the point on the question of competence.

Examiner Norwood: What do you say, Mr. Leisure?

Mr. Leisure: There is no showing in answer to your question.

Examiner Norwood: Well I know, in case there were a showing. I think that I shall admit this subject to its being connected. It is shown as coming from those files, and it should certainly be easily withdrawn or disregarded unless it is connected up, by way of effect or otherwise.

8506 Mr. Zimmerman: Don't you think it ought to be marked for identification and the matter held open for the Counsel for the Commission to connect it up and then re-offer it if they like? There isn't any reason why, when there has been no proper foundation laid, for us to charge ourselves with the duty of going into a motion to strike.

Examiner Norwood: With the volume of evidence already received we cannot say that this has not already been connected.

Mr. Zimmerman: Perhaps you can give us one single reference to the record that will show that it has been connected up, then I could say that that point is well taken, but unless and until they can do so, I say they may find something in the thousands of pages of the record that would connect it up.

Mr. Wooden: Your Honor, I refer to Exhibit 1196, F and G, a letter to Mr. Maxfield by Mr. Enloe of the Idaho Company written June 6, 1930, just a few weeks after this paper is dated. And it describes the prices bid on the Deadwood dam, 50,000 barrels, on the Minidoka project, 15,000 barrels, in which the price each bidder has bid is given. Included among them is the Oregon and the Idaho, both Respondents, and the comment is made that the Idaho

was the low bidder on the 50,000 and a little high on the 15,000; and that "this is as it should be. However I believe the bid will be awarded to the Monolith people of Laramie, Wyoming."

Examiner Norwood: And your contention is that
8507 there is some showing that this Company from which this was taken was cooperating with them in this.

Mr. Wooden: Yes.

Examiner Norwood: I think it is six of one and half a dozen of the other. We might just as well receive it as I have seen it and if it is not connected up we will disregard it.

Mr. Leisure: In addition to the objection stated, Your Honor, we object to the document as being incompetent, irrelevant and immaterial, that no proper foundation has been laid by way of identification, so that it is incompetent. There is no showing as to who wrote it. There is no showing as to when it was written. There is no showing as to how and under what circumstances it was written. The evidence does show that it was written by a non-respondent. There is no showing that that non-respondent was a conspirator in any way except by statement of Counsel.

Examiner Norwood: Well, it is a matter of the record on that.

Mr. Leisure: And the document to which Mr. Wooden just refers, is June 6, 1930, has the names of not only the Companies which he mentions, but it has also the names of the Cowell Lime and Cement Company, and it has the name of the Utah-Idaho Cement Company, Oregon Portland Cement Company, Union Portland. It has another list of Idaho Portland Cement Company, Pacific Portland Cement Company, Utah-Idaho Cement Company, Oregon Portland Cement Company, and Union Portland Cement Com-
8508 pany. I do not know how anyone from reading this letter could possibly contend it in any way makes it in any way connected with Exhibit 1179 which is now being offered. There is no showing of any connection between these two things.

Examiner Norwood: What is that Exhibit number?

Mr. Leisure: The one I am referring to?

Examiner Norwood: No, the one that is being offered, what is the number?

Mr. Leisure: 1197.

Examiner Norwood: 1197 is received as marked, on the conditions shown by the record.

(COM. EX. 1197 was offered and received in evidence.)

8509 By Mr. Wooden:

Q. Did the so-called price war, back in 1930 and 1931, affect the price in the Portland market?

A. No, sir.

Q. Was cement brought into Portland from Seattle during that period?

A. Not from Seattle.

Q. Where was it brought from?

A. Vancouver.

Q. Do you know whether or not cement in Vancouver was bought in the Seattle market under the price war, or where it came from?

A. That I do not know.

Q. Was the market price in Vancouver itself affected?

8510 A. That I cannot say.

Q. Did I understand you to say yesterday that you sold for delivery at Vancouver?

A. Yes, sir.

Q. By rail, on that?

A. Any way they wanted it.

Q. That is, you sold at the mill and let them take it any way they wanted it?

A. Yes, sir.

Q. And they did truck it there?

A. Mostly by truck.

Mr. Leisure: That is Vancouver, Washington, you are speaking of?

Mr. Wooden: Yes, that is right.

By Mr. Wooden:

Q. How long has your mill at Oswego been open to truck delivery?

A. I would say some time during 1934, during that period.

Q. What was the occasion that brought about that policy?

A. The filing by a competitive company.

Q. What was that?

A. That they would deliver truckloads of 65 barrels at the carload price.

Q. What company was that?

A. The Monolith Portland Cement Company.

8511 Q. You said something yesterday about the reduction in your maximum net price last fall, was it to 20c? Is that correct?

A. Yes, October 1st.

Q. What had been your maximum mill net before that time?

A. For a considerable period of time, 20c lower.

Q. For how long?

A. Oh, I would say possibly a period of a year and a half to two years.

Q. Did you sell for delivery by rail at Yakima, Washington?

A. Well, not—no, we have had no requests.

Q. Trucks from Yakima come to your mill, however?

A. Mostly to our warehouse.

Q. And delivered at Yakima?

A. I wouldn't say Yakima; close to Yakima, a little town known as Union Gap, close to Yakima.

Q. Is there trucking from your mill to Walla Walla, also?

A. Not lately. There was some, but not very much.

Q. Not since the reduction of last fall?

A. Mostly rail shipment.

Q. Not since the reduction of last fall, there hasn't been much rail?

A. Yes, there has been a little but not an appreciable amount.

Q. As I understand it, you do not ship into Yakima by rail?

8512 A. No, we do not.

Q. I understand there is no limitation by your mill as to what trucks may take cement?

A. Absolutely none.

Q. Is you Lime, Oregon, mill also open to truck delivery?

A. To a limited extent, it is open to any dealer that wants to take his cement.

Q. When you sell for truck delivery, what price do you charge?

A. You mean where there is a differential between the carload?

Q. Yes.

A. We have a difference between carload and less than carload. If a dealer will take a carload of cement in two days he gets the carload price. If he just wants 30 or 40 barrels and it is not a carload, the price is 15c advance.

Q. How is it at the Oswego mill?

A. At the Oswego mill there is no differential.

Q. Do you charge your maximum mill net on truck deliveries at your Oswego mill?

A. Yes.

Q. Have you ever charged the delivered price, figured by rail, on truck delivery?

A. There have been deliveries that we made by truck?

Q. Yes.

8513 A. Yes.

Q. That is, where you deliver in your own trucks, you mean?

A. Or outside trucks, doesn't make any difference; we have not sufficient trucking equipment of our own to take care of all our business.

Q. But as to delivery to trucks at the mill, you charge just your maximum mill net without any regard to where the material may go?

A. That is right.

Q. Can you give me the maximum mill net price at your Oswego mill for the period of the last five years?

A. I would have to guess at it, if I did give it to you.

Q. Well, do you know what it is now?

A. Yes.

Q. Do you know what it was last fall?

A. During the past five years it would probably reach a maximum of about $2.12.

Q. And it is now what?

A. $1.80.

Q. Did your maximum mill net show a decline or decrease in 1930, 1931, or 1932?

A. Decidedly.

Q. How much?

A. I would say 60c. That is just a guess.

8514 Q. Was that restored then largely or in part?

A. The price has been downward ever since I have been in the business; never upward.

Q. Will you supply the record of your maximum mill nets at the two mills of your Company for the period of five years?

A. I don't believe that I could answer that right now without consulting with our president and our counsel.

Q. Will you do that?

A. Gladly.

Q. And stand aid to the presiding Examiner when you are ready.

A. For how many years do you want that?

Q. Five years.

A. Five years.

8515 Q. Referring to the figure on Exhibit 1197, opposite the letter "L", the first figure "265"; then "60-5" "$2.00" ".551" and "2.551". Based on your knowledge of the cement business, what would those figures mean?

8517 Mr. Wooden: I would like to modify the question to this extent.

By Mr. Wooden:

8518 Q. Based on your knowledge of the cement business and of your bidding on that project.

The Witness: I have no knowledge that these figures "L" really represent the bids that were submitted by our Company, but assuming that they are—

Examiner Norwood: Make any further statement you wish to make in that matter. Objection overruled.

The Witness: That first figure would be the gross mill price; the second figure would be the cost of sacks per barrel, the third figure, the cash discount; the fourth figure the stripped mill net; the fifth figure, the freight cost per barrel, and the last figure the delivered cost at destination, including the mill net plus freight; the net cost delivered at destination.

By Mr. Wooden:

Q. Does your interpretation of those figures correspond to what is in the handwriting there at the bottom of the page?

8519 A. Yes, sir.

8522 WILLIAM P. CAMERON, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

I am manager of the Olympic Portland Cement
8523. Company and have been ever since it started in 1913. The mill is located at Bellingham, Washington. Its rated capacity is 3,000 barrels a day, 900,000 barrels annually. In 1930 and 1931 we were running about 70 per cent of capacity, after that it began to drop down until the last year or two when the Coulee shipments were very good. The low point was about 20 per cent in 1933 or 1934, and when it started to gain the high point was 65 or 70 per cent last year.

Q. In your Company a member of the Cement Institute?

A. Yes, sir.

Q. How long has it been a member?

8524 A. Since the institution of Code, to the best of my recollection.

Q. Is it also a member of the Pacific Coast Cement Institute?

A. It is.

Q. Where is the sales territory of your mill?

A. Western Washington and Central Washington.

Q. You do not get out of the State?

A. Only to Alaska.

Q. Do you have a regular number of customers in Alaska that buy from you right along?

A. Yes.

Q. Do you sell them f.o.b. Seattle?

A. Yes, sir.

Q. Or f.o.b. Bellingham?

A. F.o.b. Seattle.

Q. Does that mean that you transport the cement from your mill at Bellingham to Seattle for shipment?

A. Yes, sir.

Q. Are there no facilities for shipment to Alaska from Bellingham direct?

A. There are facilities, but the Alaska boats do not go into Bellingham.

Q. Do you ship from your mill by water?
A. Yes, sir.
Q. To what points?
8525 A. Mostly on the west side of the Sound, Port Angeles, Olympic Peninsula.
Q. Not to Seattle itself?
A. We have on occasion, but not very often.
Q. What is your maximum mill net at the Bellingham Mill?
A. $2.25.
Q. That is stripped?
A. Stripped.
Q. In what territory does that maximum mill net obtain?
A. In a very small territory tributary to the plant.
Q. Can you define the territory a little more?
A. I would say within Whatcom County.
Q. How long a percentage of your business is in that maximum mill net territory?
A. I should estimate it at 15 per cent; 10 to 15 per cent.
Q. That includes Bellingham?
A. Yes, sir.
Q. Do other Western Washington mills sell into Bellingham?
A. Occasionally.
Q. Do you find your largest market in Seattle?
A. Yes, Seattle and surrounding territory.
8526 Q. What does the Seattle business produce in the way of mill net?
A. $1.91 at the present time.
Q. Do you know what the maximum mill net from other Washington mills are?
A. Well, to the best of my knowledge, the net here is $2.25, in Seattle. That is, I presume, the same as ours, although I am not informed as to that.
Q. The Grotto?
A. The Grotto, probably the same.
Q. How long has that situation of the maximum mill net being the same at the mills existed?
A. Since 1931.
Q. What changes in the maximum mill nets have there been since 1931?
A. To the best of my recollection, after the war there

was a $2.10 maximum mill here established in Seattle; later on increased to $2.25. What the date was I don't know.

Q. This war that you referred to, what war was that?

A. The result of two new companies coming into the field.

Q. Who were they?

A. Northwestern Cement Company and the Pacific Coast Cement Company.

Q. Which one came in first?

A. The Northwestern.

8527 Q. Can you say when?

A. 1928, I believe.

Q. Did the entrance of the Northwestern Company into the field at that time cause a reduction of prices?

A. Not materially.

Q. What about the Pacific Coast Company?

A. Well, it did eventually affect prices.

Q. When the Pacific Coast Company first began operations, was the Seattle price stable for a time?

A. For a little while I believe, yes.

Q. What happened then?

A. Well, in its desire to get business the prices began to decline, with the result that they went from bad to worse.

Q. How low did the prices go?

A. I think to $1.15 in Seattle.

Q. How low did your mill net go during that time?

A. 85c.

Q. How long did that situation continue?

A. Pretty nearly a year, I think.

Q. As a matter of fact, wasn't it during two years, 1930 and at least part of 1931?

A. Part of 1930 and part of 1931.

Q. When the Pacific Coast Mill was leased by the Superior was the price promptly advanced?

8528 A. Well, I shouldn't say "promptly". It wasn't very long after that before they established the—

Q. (Interrupting) Do you know what the amount of the advance was?

A. I don't recall now.

Q. Do you recall whether or not a very substantial advance was made in June, 1931?

A. Well, that would be about the time that the price was reestablished.

Q. Can you say whether or not the price was advanced over night as much as 50c a barrel?

A. I couldn't say that.

Q. Did your mill fall in line with the advance that was made when the lease was consummated?

A. We followed the advance.

Q. When other mills sold in Bellingham did they make their delivered price there the same as your maximum mill net?

A. They would have to in order to meet our competition.

Q. When you go into a territory that is nearer, freightwise to other mills, do you meet their maximum mill net?

A. Yes.

Q. Make your delivered price the same as their maximum mill net?

A. Yes, sir.

8529 Q. Do you recall a visit by Mr. Milwee of the Federal Trade Commission to your offices in 1932, I believe?

A. Yes.

Q. Did you provide him with copies of various papers that he selected from your files?

A. Yes, sir.

Q. I show you a paper marked for identification 1209-LL. Will you identify that as one of the papers provided Mr. Milwee?

A. Yes.

Q. Is that a copy of a communication received by you?

A. Yes, sir.

Q. From Mr. Tongue of the Superior?

A. Yes, sir.

Q. Addressed to "Dear Cam," is that right?

A. Yes, sir.

Mr. Wooden: I now offer it.

Mr. Leisure: No objection.

Mr. Little: No objection from the Superior.

Mr. Zimmerman: No objection.

(COM. EX. 1209-LL was offered and received in evidence.)

8530 Q. To what extent have you provided trade publications with information as to your maximum mill net prices?

A. Only to a limited extent.
Q. Well, can you say to what extent, what publications?
A. Well, rock publications I think is about the only ones.
Q. Have you continued to do that?
A. We have not been asked for the last three years, to my knowledge.
Q. Have you provided information as to your maximum mill net to any of your competitors?
A. We don't have to do that.
Examiner Norwood: He asked you if you did. Please give a direct answer.
The Witness: No, sir.

By Mr. Wooden:

Q. Is that something that can be worked out by calculation?
A. Yes, sir.
Q. Do you calculate your competitors' maximum mill nets by figuring back from delivered prices?
A. Yes, sir.
Q. After finding that these figures, back from several points, reach the same figure, do you then conclude that that shows the maximum mill nets?
A. Yes, sir.
8531 Q. Do you then quote at other points on the basis of that calculation?
A. Well, I wouldn't say that we do that. If it becomes a general maximum mill net, we will.
Q. I am trying to get out just how many calculations you make before you come to the conclusion that it is the general maximum mill net.
A. I can't say as to that.
Q. At any rate, you do calculate it at any particular point to get the net to satisfy you and then you use that as your base for calculation at other points, is that right?
A. Generally.
Q. To what extent is the freight from your Bellingham mill the same as the freight from other mills in this vicinity?
A. It is pretty hard to say; from Bellingham and from Concrete and Grotto to Seattle, and points south.
Q. That includes Tacoma and Olympia?
A. Yes.
Q. Aberdeen?

A. There may be one or two points where we have a little advantage, being on the Northern Pacific.

Q. Vancouver?

A. The same.

Q. Have there been—has that always been true?

8532 A. Yes.

Q. Do you mean going back to the very beginning of your mill?

A. Yes.

Q. There are some other points not so important as the ones you have named, where you do have a better freight rate than the other mills?

A. No, Yakima is the same from all three mills mentioned.

Q. How about Everett?

A. Everett is the same, I believe, from Bellingham and Concrete. Grotto is lower.

Q. To Everett?

A. Grotto is lower to Everett. I am merely trying to ascertain whether there are not some destinations in Western Washington where the freight from the various mills varies?

A. Yes, it does vary a little bit.

Q. Will you give us some idea of what those points are or the character of those points?

A. Well, Everett is one in particular.

Q. Some others?

A. That is about the only one of any importance.

Q. But there are others?

A. Yes, there are other points here across the lake that would carry a different rate from Concrete and Grotto than they would from Bellingham.

Q. Do you find, generally speaking, that the destination prices from your mill and competitive mills at a given destination are the same?

A. We find them to be the same.

8533 Q. I am referring you now to exhibit for identification 1209-G. Will you identify it as a copy of a letter which you wrote under date of December 26, 1929, and which copy you provided to Mr. Milwee?

A. Yes.

Q. You did?

A. I did.

Q. Now, the second page of 1209-G, will you explain or

describe what the arrangement was that you had been "endeavoring to keep effective during the preceding few months"?

A. May I see that?

Q. Yes.

Q. Well, Mr. Cameron, did you have some arrangement in December, 1929, that you had been endeavoring to
8534 keep effective over a period of some months?

8536 A. All we were trying to do was to prevent the market running away from us.

Examiner Norwood: You can bring those particulars out. The objection is overruled. Read the question now, and I will ask the witness to give a direct answer. If he does not understand it he can say so.

(Question again read.)

A. No.

8538 By Mr. Wooden:

Q. Mr. Cameron, showing you that 1209-G, do you recall what the arrangement was that you referred to?

The Witness: There was no arrangement.

8540 Q. What did you mean a while ago, Mr. Cameron, by your answer: "All you were trying to do was to prevent the market getting away from you," or something like that?

A. Well, there was a stage there where we disliked to see it go all to pieces. We thought there was a possibility of some of our neighbors might lay off and not be so aggressive, which, however, did not transpire, and I was endeavoring to convey to our people just what the
8541 true situation was, how we had to follow the market down.

Q. Did you take up with your competitors any proposal as to what should be done?

A. No, sir.

Q. Were you holding up your price while the others were cutting below it?

A. No.

By Mr. Wooden:

Q. You were following down as the others made their cuts?

A. Yes, sir.

8542 Q. Referring to Exhibit 1209 (2x) for identification, is that a copy of the document provided to you by Mr. Milwee?

A. Yes.
Q. Is it your own communication?
A. Yes, sir.
Q. Did you find at that time, in February, 1930, that the Northwestern Company was fifty cents a barrel under a scheduled price for paving work?
A. I don't recall.
Q. Well, I am referring to your letter.
A. I didn't read the letter.
Q. This No. 4.
A. Well, I should say it is evident that the price was fifty cents a barrel lower.
Q. Lower than what?
A. Lower than our price schedule.
Q. What was the price schedule?
A. I couldn't tell you that.
Q. Was there a scheduled price for paving work?
A. Well, we used the relation schedule in our own list that we make up.
Q. Do you exchange such schedule prices with other mills?
A. No, sir.
Q. Did you know what the scheduled prices of other mills were?
8543 A. Yes; we could find that out.
Q. How?
A. By figuring, finding out what prices were being quoted.
Q. Well, paving work—wasn't that on bids, sealed bids?
A. Well, bids of contractors,—the price you give to contractors to bid with,—if you call that sealed bids.
8544 Q. Did your Company maintain its share of proportion of the available business during that price war, or did you lose?
8545 Mr. Leisure: The question in itself is confusing. "Your share of the business." What is "Your share of the business"—what is "share of the business"? Two new companies have come in; and what does the question mean as to "your share of the business." It is not clear at all.
Examiner Norwood: Objection overruled; answer the question.
The Witness: I cannot say as to that.

By Mr. Wooden:

Q. Did the proportion of your shipments to ca-
8546 pacity show a decline during that period or not?

A. I cannot answer that either.

Q. Showing you Exhibit 1209-3U for identification, do you recognize that as a copy of a communication of yours?

A. Yes, sir.

Q. With that to refresh your recollection if necessary, can you say what if any efforts were made by your Company to bring about an adjustment of the price war situation?

A. No individual efforts.

Q. What do you mean? Individual on your part?

A. Yes.

Q. What about officers of your Company?

A. I think they made no effort.

Q. Mr. Bailey?

A. He was then my senior.

8547 Q. Was there some plan on foot to put an end to the price war at the time you wrote this letter of January 12th, 1931?

8548 The Witness: I do not recall any plan.

By Mr. Wooden:

Q. During that price war, did your company sell for delivery in Oregon?

A. No, sir.

Q. Has it ever done so,—sell for delivery in Oregon?

A. 1915 and 1916.

Q. Not since then?

A. Not since then.

Q. Did you have a dealer by the name of the Copeland Lumber Company?

A. Yes, sir.

Q. Did it take your cement into Oregon, after buying it in the price war area?

A. I understand he did.

Q. Where was that concern located?

A. Vancouver, Washington.

Q. Did they take a delivery there by rail and then put it into Oregon?

A. Yes, sir.

8549 Q. Did you find objections made by other mills to that?

A. No, sir.

Q. Do you wish to reaffirm your answer after I show you Exhibit 1209-2-V?

The Witness: (Examining paper) I would qualify it by saying that there may have been some objections to that cement going into Oregon.

By Mr. Wooden:

Q. That came to you in the regular course of your business from officials of your company?

A. Yes.

8550 By Mr. Wooden:

Q. Mr. Cameron, showing you a paper marked for identification Exhibit 1209-3s, do you recognize that as a copy of a letter written by you in February, 1931?

A. Yes, sir.

Mr. Zimmerman: February what?

Mr. Wooden: February 27, 1931.

By Mr. Wooden:

Q. Have you read over the letter?

A. I am just glancing over it now.

Q. Was there a plan for settlement of this price war suggested by Mr. Barnum?

A. There may have been.

Q. Who was Mr. Barnum?

A. He was then president of the Pacific Coast Cement Company.

Q. You were aware at that time, were you not, of what the plan was?

A. Does it refer to it in that letter?

8551 Q. (Extending paper to witness)

A. Well, that refers to a possible arrangement by the Superior about leasing the plants.

8552 Q. You knew there was a plan by Mr. Barnum?

A. I knew there was some kind of a plan.

Q. You knew that several months in advance before the lease was actually consummated?

A. I knew it was under consideration; that was all.

Q. Under consideration for some months?

A. I don't know how long.

Q. By reference to this paper dated February 27, 1931,—

A. (Interrupting) It must have been in the air, yes, for some time.

Q. Showing you paper marked for identification 1209-EE, is that a copy of a communication of yours provided to Mr. Milwee, dated June 12, 1931?

A. Yes, sir.

Q. When the price was restored to $2.10, that was the base at all of the mills, was it?

A. I don't know as to that. $2.10 net here stripped?

Q. Yes.

A. We advised that we put in the same maximum mill net at Bellingham that applied.

8553 Q. Were you opposed to too big an advance in the price at that time?

A. We did not want to leave it set unreasonably high.

8557 Q. Mr. Cameron, did you on or about December 26, 1929 write to your principal in London making this statement: "If we have to go to the mast, probably all profits will just be thrown away in 1930, and frankly we are very loth to see this happen even at the expense of a smaller percentage of tonnage. 50c or even 75c would soon vanish if it came to an aggressive price war, 8558 and while it might be the means of clearing the atmosphere, it certainly would be pretty expensive and we seriously question whether it would be worth it. After all, we would eventually have to get together again and try to work out some similar arrangement as we have been endeavoring to keep effective during the last few months."

A. Yes.

Q. Will you state what the arrangement was that you referred to?

A. We were simply trying to maintain prices without letting the market go all to pieces. Following the market.

Q. Do you mean maintaining them—

A. (Interrupting) Which we understood our competitors' prices to be.

Q. That arrangement was just what you have already done, isn't it?

A. Follow the market, yes.

Q. What was there at that time that you referred to as a similar arrangement in effect for a few months?

A. We were advising our people to the best of our knowledge as to what the true situation was. The market

had to recover sometime. The only way it could be done was somebody reestablish a reasonable price, and the others following.

Q. What did you mean by stating that you would eventually have to get together again?

8559 A. Just as I said a minute ago, follow the market. Somebody had to establish a price.

8561 Q. At that time did you make a statement to the effect that you had a pretty good idea what your 8562 proper share of the business should be and Olympia's position was strong enough to hold out for that irrespective of sales.

Mr. Little: The same objection, Your Honor. That is exactly the same type of question.

Examiner Norwood: I think he bases his answer on that. Objection overruled.

A. I don't recall making any such statement.

By Mr. Wooden:

Q. Showing you a paper that you identified as a copy of your letter, Exhibit No. 1209-000. Does that refresh your recollection?

8563 The Witness: I do not recall the statement, but apparently there is some reference to it in that communication.

By Mr. Wooden:

Q. Did you at that time make a statement to the effect that one of your competitors whose name was not desireable to mention, had approached your Mr. Bailey with the view of ending the war?

Mr. Zimmerman: Will you read the rest of the sentence while you are about it, Mr. Wooden?

By Mr. Wooden:

Q. (Continuing) But that you saw no prospects of a settlement for some little time.

A. If I made that statement in that letter, yes.

Q. Was that the Pacific Coast Company?

A. I could not tell you as to that.

Q. Was it the Northwestern Company?

A. I am not aware of it. I don't recall.

Examiner Norwood: Was it any of these respondents?

The Witness: I could not truthfully say.

8564 By Mr. Wooden:

Q. In May, 1931, did you write your Company to the effect that steps were then being taken toward a readjustment of prices? (handing paper to witness.)

Mr. Zimmerman: What is it the witness is being shown now, if you please?

Mr. Wooden: 1209 T and U for identification.

The Witness: (Examining paper) Yes, that had reference to the leasing of the Pacific Coast Company plant by the Superior.

By Mr. Wooden:

Q. That lease did not become effective for some weeks after that, did it?

A. I am not aware as to that.

8571 By Mr. Wooden:

Q. Mr. Cameron, do you know something of the circumstances and facts regarding the taking of the order for the Ford plant cement during this price war, right near the Pacific Coast Company mill?

A. I knew something about it at the time, but I don't recall the circumstances. It was during the war, wasn't it?

Q. Yes. Where was that business with reference to the Pacific Coast Company plant?

A. The Ford plant is right down here on East Marginal Way, it is not very far away.

Q. Within a mile or so?

A. Probably not that much.

Q. Did the Superior Company take that business?

A. I don't recall who got it now. We did not.

Q. Was 1209-r and -s for identification a letter of yours dated February 24, 1931?

A. Yes, sir. Apparently the Superior Company got that order.

Q. Does that refresh your recollection?

A. Apparently the Superior Company got that order.

Q. Did you figure out the net which they obtained on it?

A. It is stated there, yes.

Q. Did you figure it out?

8572 A. Yes.

Q. If so, what was it?

A. 90c, mill.

Q. In 1209 (3s) I think you already identified that as one of your letters?

A. Yes, sir.

Q. What do you know with reference to a survey by Mr. Cross of the Pacific Coast plant?

A. I don't know anything more than he was out here on a survey at that time.

Q. Who is Mr. Cross?

A. He is connected with some eastern cement company. I don't recall the name.

Q. With what company?

A. Some eastern cement company. I don't recall the name.

Q. What kind of a survey did he make?

A. I can't tell you as to that.

8575 *Cross Examination by Mr. Leisure.*

8576 Q. Now, when you ship into a competitor's territory, do you meet the competitor's price there?

A. Yes, sir.

Q. And that is the market price, is it, at that place?

8577 A. What we believe to be the market price.

Q. When you meet his price in that territory, do you meet his sales price or market price, or do you meet his mill net price? What do you meet?

A. Meet his sales price.

Q. With reference to Exhibit 1209(xx), Mr. Wooden asked you if the scheduled price equals the market price, or he asked you whether or not the scheduled price was the price that you came back to. Do you remember that testimony?

A. Well, my reference to schedule was probably our own price lists, scheduled lists.

Q. What I am getting at—I want to find what scheduled price meant as used by you. Did you mean your own price list?

A. Yes, whatever our own price list would be.

Q. That is what you meant when you gave testimony with respect to the Northwestern selling at 50c below the scheduled price?

A. Yes, sir, 50c.

Q. 50c below the scheduled price?

A. Yes.

Q. When you gave testimony a moment ago with reference to Exhibit 1209(tt) and Mr. Wooden asked you if you had said you would eventually have to get together, did you have in mind, when you said that, that you would
8578 have to get together and agree upon something or that your market price would have to be similar?

A. I simply referred to the ultimate recovery of the market, which could only be brought about by somebody reestablishing a price at a reasonable level and the others following.

Q. And could you have sold your cement any higher than anyone else?

A. No, sir.

Q. Now, Mr. Wooden asked you several questions with respect to the settlement of the price war. Do you know of any such settlement?

A. None other than the recovery of the market. There was no settlement.

Q. Do you mean by that that some competitor raised the price and you followed?

A. Yes, sir.

Q. Is that what you mean by settlement of the price war?

A. Yes, sir.

Q. And that was the end of it, is that what you mean?

A. Yes, sir.

Q. Has there been any since that time?

A. Was there any—?

Q. Price war?

A. No, sir.

8579 *Redirect Examination by Mr. Wooden.*

Q. Your mill net on each particular sale, Mr. Cameron, is all that you actually receive from your customers, isn't it?

A. Eventually, yes.

Q. And every time you quote a delivered price, you know what the mill net to you is in that price, don't you?

A. Yes, sir.

Q. Isn't that the thing that determines whether you are making a sale at a profit or loss?

A. Yes, sir.

Q. Compared with your mill net?
A. Yes, sir.
Q. During this price war were there occasions when your price was higher than the Pacific Coast Company?
A. I believe so.
Q. Were there some occasions when your price was lower than theirs?
A. Lower than their price?
Q. Yes.
A. Yes, that may be so.
8580 Q. During that period you and they both continued to sell cement at those varying prices?
A. Well, there came a time when we were not anxious to sell cement. We were not active in selling cement at a loss.
Q. But for some time you sold cement and they sold cement at different prices?
A. We met their competition where we felt we wanted to meet it.
Q. During that period there were times when you and they were selling at different prices, isn't that right?
A. Yes, sir.

8583 C. T. W. HOLLISTER, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

I am president of the Northwestern Portland Cement
8584 Company. I was the originator of the company. Its mill is located at Grotto, Washington. It was established and we started shipping sometime in June, 1928. I was previously connected with the Sun Portland Cement Company of Lime, Oregon.
Q. Was that sold out to the Oregon company that has a mill at Oswego?
A. I don't think it was sold, sir; I think it was amalgamated or consolidated with the Oregon company, yes.
Q. Did you, before establishing your mill at Grotto, survey the field with reference to its potentialities as a market for a new mill?
A. We did, sir.

Q. Did you conclude that there was room for a third mill?

A. We did, sir.

Q. The two mills that were in operation prior to yours were the Superior and Olympic, is that right?

A. Correct, sir.

Q. Where is Grotto with relation to Seattle?

A. About in the neighborhood of 75 to 80 miles
8585 northeast on the main line of the Great Northern.

Q. Did you have Seattle in mind as your principal consuming market?

A. One of the principal consuming markets.

Q. Has it continued to be?

A. No, sir.

Q. Have you practically withdrawn from Seattle business?

A. No, sir, we are selling in Seattle.

Q. State whether or not it is true that you have not sought the business of the city of Seattle in recent years?

A. We approached the city of Seattle when we first came on the market and they very politely told us that they could not give us any business, that they would have to patronize the local mill here. The local mill was paying from $20,000 to $25,000 a year for power, so we were out of it.

Q. Have you bid on city business?

A. No, sir.

Q. You have not continued to solicit at all?

A. No, sir.

Q. Did you know that the city had recently endeavored to get quotations from your company?

A. I received the invitation, yes, sir.

Q. You did not care to bid?

A. No, sir.

Q. For the reasons that you have already given?
8586 A. No, sir. They asked for a bid on a 240-barrel car, and our maximum is 231.

Q. Too large for you to handle?

A. We only get 80,000 minimum at Grotto, that is the 231-barrel cars.

Q. When you started your plant at Grotto, did you adopt the maximum mill net price which you found in effect at the other mills?

A. We established a price existant at our mill, yes, sir.

Q. Referring for a moment again to this Seattle business, if that had been a normal-sized car, would you have bid on it?

A. No, sir.

Q. For the reason that you have previously stated?

A. Yes, sir.

Q. Didn't they recently offer you an invitation for a normal car order?

A. No, sir.

Q. Weren't you informed recently that the city wanted to consider placing an order with you?

A. Nothing further than the invitation to bid.

Q. And if that invitation had been for a normal car, you still would not have bid?

Mr. Shefelman: If the Examiner please, I object to that question. I think what they would have done under
8587 circumstances which have not yet come into being or arisen calls for a conclusion of the witness not based upon any testimony, and it is asking to forecast something in the future. He can be asked whether he bid or refused to bid, but I object to that question upon the ground stated.

Examiner Norwood: I do not see that. He can ask him as to his policy. That is what he was asking him in another form.

The Witness: I would have to wait for the invitation before telling you.

By Mr. Wooden:

Q. Will you sell the city of Seattle if they offer you a normal car?

A. I would have to determine that when they ask me, when they make the offer, sir.

Q. Why wouldn't you if they did offer you a normal car?

Mr. Leisure: He did not say that he would not.

The Witness: I will have to wait until the offer is made to us, sir, and then I will use my own pleasure about it.

By Mr. Wooden:

Q. Is there any reason why you would not consider taking the city's order for a normal car?

A. No, sir. As far as I can see now, Mr. Wooden;
8588 but there might be a change in my attitude toward them. They are not very friendly.

Q. When you started your mill at Grotto, as I understood it, you adopted the maximum net prices in effect at the other mills?

A. At Bellingham and Concrete, yes, sir.

Q. Did you have some territory adjacent to your Grotto mill where you had a freight advantage over the other mills?

A. We have a short strip in the valley, in the Skykomish Valley, yes, sir.

Q. When other mills go into that territory where you have a freight advantage, do they make the same delivered price at the points that you do?

A. As far as I know, yes.

Q. Do you go into territory where other mills have similar freight advantages?

A. We do, yes.

Q. Do you make the same delivered price at destinations in that territory that they do?

A. We do, sir.

Q. What is the maximum mill net at your Grotto mill?

A. $2.25 stripped.

Q. What is the minimum mill net that you obtain?

A. I could not answer that question.

Q. Approximately?

8589 A. That is commercial?

Q. Yes.

A. I should judge around $1.72.

Q. What is your mill net on Seattle shipments?

A. Around $1.90.

Q. At the time you established your Grotto mill, did you encounter opposition from some competitors?

Mr. Leisure: Now, wait just a minute. I have no objection to the witness being asked any facts and from those facts your Honor may deduce that that amounts to opposition, but to ask him to state a conclusion as to so much opposition, I think it is improper. I do not think the question should be allowed and I object to it.

Examiner Norwood: Did you find competition?

The Witness: Yes, sir.

By Mr. Wooden:

Q. I meant with reference to the initial establishment of the mill, not after it was established.

Mr. Leisure: I submit that conclusions of that kind are not proper.

Examiner Norwood: I think the question is admissible. Objection overruled.

The Witness: Could I have that question again, please?

8590 (The question was repeated.)

The Witness: Oh, there was naturally a little rumpus in the jungle by the coming into the field of a new mill here.

By Mr. Wooden:

Q. What do you mean by a rumpus in the jungle?

A. Well, the opposition that developed with a new mill coming in.

Q. Did you find opposition from the Superior Portland Cement Company?

A. Yes, sir.

Q. What was the nature of it?

A. Oh, just trying to hold us back.

Q. In what way?

Mr. Zimmerman: If the Examiner please, couldn't we agree that they got to the point where they were not on speaking terms, or something of that sort, and let it go at that? It has not anything in the world to do with any of the issues in the case.

Examiner Norwood: Counsel may establish that if he wishes.

Mr. Wooden: Perhaps they got on better speaking terms later.

The Witness: Oh, we have always been on speaking terms, but they were not very cordial.

8591 By Mr. Wooden:

Q. Did you encounter some opposition to your obtaining financial backing from banks?

Mr. Leisure: I think counsel should state what he means by so much "opposition." We are here to try facts and not conclusions as to what amounts to opposition.

Examiner Norwood: I think it is very clear. It is admissible as stated, and it can be indicated more clearly, perhaps, on further and more definite questioning on cross-examination or otherwise.

Mr. Leisure: It clearly calls for a conclusion what "opposition" was.

Examiner Norwood: This witness may state what opposition is.

The Witness: Could I have the question again? Did you say banks?

By Mr. Wooden:

Q. Yes.

A. We never went to the banks.

Mr. Little: May I ask Mr. Wobden to make some offer of proof as to what this line of testimony is. It clearly has nothing to do with any alleged conspiracy. The fact that there was opposition ten years ago to the construction of a new cement mill, what possible bearing would that
8592 have upon any proceedings under which they seek a cease and desist order? It is too remote, and it indicates a lack of conspiracy instead of the very thing that this proceeding is directed to.

Mr. Wooden: We have had other evidence of efforts on the part of the established industry to prevent the entrance of new plants and concerns into the industry.

Mr. Leisure: There is no showing that one company taking action of that kind has any connection with the industry in doing it. If it came under some head of the industry, there might be some reason for trying to prove it here, but just one company showing opposition, whatever the word means, is quite another thing.

Mr. MacIntyre: If your Honor please, there are documents in the record now in the form of communications from the president of the Cement Institute to members of the Cement Institute advising them as members as to what action that they as members may take to prevent the invasion and establishment of new mills in the cement industry as new competitors.

Mr. Leisure: I think that Mr. MacIntyre should state, in order to have the record clear, that that was during the Code period and relating to an article in the Code.

8593 Mr. Zimmerman: He also might state that it was beyond the scope of anything that the Institute ever had any authority to do.

Mr. Little: Furthermore, this was at least five years before any of the respondents in the Pacific Northwest joined the Cement Institute, and I should like to ask counsel if he considers that there is anything wrong with a man who operates a corner grocery objecting and being a

little hostile to the fact that somebody else sets up a grocery store right across the street. Is there anything wrong about that?

Mr. Wooden: It is not a question of feeling, it is a question of what he does.

Mr. Little: There is no showing of any conspiracy merely because you feel a little bit perturbed about another company coming in.

Examiner Norwood: Those arguments would go to the weight of this testimony, but inasmuch as there is some proof of efforts on the part of some to discourage his entrance into the industry, it might come in if the picture can be made complete. If not, it won't hurt anybody.

Mr. Wooden: He answered the particular question, anyway, in the negative.

Examiner Norwood: All right, then, go ahead.

8504 By Mr. Wooden:

Q. Didn't you tell Mr. Milwee, representing the Commission, in 1932, that the Superior Company blocked your efforts to obtain financial backing?

A. I don't remember that, sir.

Q. And that then you went out to sell stock?

A. I beg your pardon?

Q. It was after that that you went out to sell stock?

A. After Mr. Milwee?

Q. No, after being unable to obtain aid from the banks.

A. No, sir. No, sir. We never went near the bankers, we never asked them for any help and we have not today and never will.

Q. Did you find any effort on the part of the Superior Company to interfere with your getting a permit to sell your stock in the state?

Mr. Little: May it be understood, your Honor, that my objection goes to this entire line of testimony?

Examiner Norwood: Yes, that is right. Answer the question.

The Witness: I am not very positive on that. There were rumors that they were trying to block us from getting a permit.

By Mr. Wooden:

8595 Q. You don't know anything except rumors on the matter?

A. That is about all that I know, sir.

Q. There was some effort made by somebody to block you, was there?

A. Yes, those were the rumors at that time. Who it was, I don't know.

Q. Did you continue to sell in Seattle during this price war of 1930 and 1931?

A. We picked up the smallest amount of business we could, sir, to maintain our standing with our dealers.

Q. Did you come back into the Seattle market?

A. We are here, sir, now.

Q. After that, in any stronger way?

A. We moved along about the same tonnage we have always had here.

Q. Did your mill at one time sell into Oregon?

A. We did, sir, yes, sir.

Q. When was that?

A. From 1928 to the latter part of 1929.

Q. Was that during part of the period of this price war that has been referred to?

A. No, sir.

Q. Did I understand you have not sold into Oregon since the price war?

A. Before the price war. It was in 1929.

8596 Q. You have not sold any into Oregon since—

A. (Interrupting) Since 1929, no, sir.

Q. Of course that was before the price war. What is the reason you discontinued business in Oregon?

A. Well, after we came into production, we were maintaining an office in Portland to sell cement and look after things—the president's office was there. We had an office there to sell cement, and to look after the presidential details, and we started in to sell cement, and in 1929 the Board of Directors ordered us to close the office up.

We lost money on every barrel of cement we sold in Oregon, and we quit.

Q. You kept it up for a long period of time, losing on every barrel?

A. No.

Q. A year or so?

A. From June, 1928, to the latter part of 1929, yes, sir.

Q. Had you received any smaller mill net in the border towns along the Columbia in Oregon that you received in the border towns in Washington?

A. I would call along the Columbia River, Vancouver,

Columbia River, a distress territory. Prices are so low there that I would be insane to go down to sell.

Q. Do you go to Vancouver now?

8597 A. No, sir.

Q. You have gone to Vancouver in the past?

A. I don't think we have been in Vancouver since 1929, 1930 or 1931; along in there some time.

Q. Do you have a Mr. J. A. Reuter among your stockholders?

A. It is pronounced Reuter, R-e-u-t-e-r. J. A. Reuter. Yes, he is with us.

Q. Is he a director?

A. He is a director.

Q. Is he also vice-president of the Northwestern?

8598 Mr. Shefelman: Just a minute, please, if the Examiner pleases. I misunderstood that question. May I hear that last question read again?

(The question was read.)

By Mr. Wooden:

Q. J. A. Reuter of the Northwest Company I mean?

A. It is an honorary title.

Q. Is he also a stockholder in the Oregon Cement Company?

A. No, sir.

Q. Has he been at one time?

A. Never to my knowledge.

Q. You did not inform Mr. Milwee to that effect some years ago?

A. No, sir.

Q. During the time that you and the Pacific Coast Company were actively in the field, in other words during the time of the price war so-called, did you meet with representatives of those companies and the Superior with regard to an adjustment of freight rates?

A. I cannot recall that.

Q. Showing you Exhibit 1199 A to D inclusive, does that refresh your recollection about the matter. (Handing papers to the witness.)

A. (Witness examines the papers) I cannot remember this, Mr. Wooden.

Q. What was the substance of the situation that

8599 you were seeking to adjust there?

A. It is one of those cases that come up occasion-

ally when cement companies made application to a carrier for a new rate, and the carrier out of courtesy to all the manufacturers, assembled and talked this matter over. In this field, these carriers have what they call a Docket, and the cement companies are notified in advance what is coming up on the Docket when some mill is making application for a reduction. And the carriers do not want to put in a rate and then have a mill come forward after tariffs have been published and object to the rate; that is all.

Q. This was a meeting of the mills including yours, at which it was agreed according to those papers I showed you that they would make certain representations to the railroads?

A. Possibly that was gotten up by a rate firm here that handles rates and those sort of things and it was called at my office, if I remember, I suppose, out of courtesy to myself, and that is all there was to it.

Q. The price-cutting war was in effect at that time?

A. I don't know what the date of it is, sir.

Q. Can you state when the price-cutting war did begin?

A. I think somewhere around 1930.

Q. Didn't it begin in 1929?

A. I could not recall that, sir; I do not know.

Q. Didn't it begin almost or very shortly after 8600 the Pacific Coast Company began operations?

A. I cannot answer that question; I am not definite on it.

Q. What were you and the other cement companies seeking to accomplish by this proposed adjustment of rates between the mills and several points as covered by Exhibits 1199 A to D inclusive?

A. That is a practice that has been in effect for years?

Mr. Wooden: Can't you answer my question?

A. I don't know the details. I have not taken the Court's time to read it. I would have to go through it. I have not seen it in a great many years, sir. If you want me to sit down and read this, I will.

Q. Well, I just want to refresh your recollection about it long enough to ask you the general question, that is all.

Mr. Shefelman: Pardon me, Mr. Wooden. I would suggest if you are going to interrogate the witness in regard to that meeting, and that written document, you give him an opportunity to read through it.

Mr. Wooden: I have not the slightest objection, but I

did not want to take the time. I think all of the substance is set forth on the first page, and the rest of it consists of proposed statements that each mill would make.

Mr. Shefelman: I suggest Mr. Wooden put the question, and it may not be necessary for the witness
8601 to take the time to read the document.

Mr. Wooden: That is what I was about to do.

The Witness: Can you give me the question and maybe I can answer it?

(The question is repeated.)

The Witness: As far as our Company is concerned, it was to be on a parity with other producers, that they had no advantage over us on freight rates; that is all.

By Mr. Wooden:

Q. Are there producers at other points? They were at other points anyway, weren't they?

A. Surely.

Q. And they were also concerned with the same subject?

A. Naturally. That is, as far as I know from what developed in the conversation. They would be, or they would not be there.

Mr. Wooden: I have nothing further, Your Honor.

Mr. Leisure: No question.

Mr. Shefelman: I have a question or two.

Cross Examination by Mr. Shefelman.

Q. Mr. Hollister, you stated that you were informed by the city purchasing agent some years ago that they favored the other plant, the Seattle plant, because the Seattle plant was buying some $25,000 of power. Just
8602 who were they buying that power from?

A. They were buying it from the City Light.

Q. In other words, we have two power companies here, one a public utility privately owned, and the other a municipally owned plant?

A. That is correct.

Q. And the other cement company was buying from the plant owned by the City of Seattle?

A. Yes, sir.

8606 San Francisco, Cal.,
July 6, 1938.

Appearances:

Same as heretofore, except for the addition of:

Walter C. Fox, Jr., of Chickering & Gregory, 111 Sutter Street, San Francisco, Cal., appearing for Calaveras Cement Company.

8608 Mr. Leisure, on behalf of North American, in response to a subpoena furnished a letter from Mr. Leake enclosing certain figures. The letter was marked for identification as Com. Ex. 1210 A to D, inclusive.

Mr. Wooden: The papers produced by Mr. Leisure have been marked Commission's Exhibits 1210-A to D, for identification, and I offer them for the record at this time, Your Honor.

Examiner Norwood: Any objection?

8609 (No response.)

Examiner Norwood: Received as marked.

(COM. EX. 1210-A, 1210-B, 1210-C, and 1210-D was offered and received in evidence.)

Mr. Zimmerman: If the Examiner please, as to these exhibits referred to as 1207-C, E, F, G, H, and I, may I add the additional objection, as far as Marquette is concerned, that these documents are not shown to be pertinent or relevant to any issue in the Complaint.

From their date, it is apparent that they were before either the companies referred to therein, or Respondent Marquette, were connected with the Institute. There is no showing either of any connection with the matters referred to in the exhibit, of the Respondent Marquette Manufacturing Company, or the Respondent Cement Institute.

Examiner Norwood: I shall consider that in making my ruling.

Mr. Wooden: Mr. Gay.

GEORGE R. GAY, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

8610 *Direct Examination by Mr. Wooden.*

I am the general manager of the Santa Cruz Portland Cement Company. I have been connected with that company in that capacity for nearly 30 years. It has just one producing mill, located at Davenport, California. I have been general manager for close on to 30 years. Santa Cruz is one of the oldest companies in California. I think the Pacific Portland Cement Company with a plant at Tolenas, California, is older than we. The capacity
8611 of the Santa Cruz mill at Davenport is about 6 thousand barrels a day and our annual capacity about 2 million barrels. I don't know that we have ever announced our capacity to the Cement Institute.

Q. Are you a member of the Cement Institute?

A. We are.

Q. How long have you been?

A. We joined the Institute prior to the—when they were representing the industry before the code.

Q. Prior to that time you were not members?

A. No, sir.

8612 Q. Do you belong to the Pacific Coast Institute,—Pacific Coast Cement Institute?

A. We do.

Q. Were you a member of any other organization of the cement industry?

A. The Portland Cement Association.

Q. Did you have any local group organization here in California prior to the formation of the Pacific Coast Cement Institute?

A. No.

Q. How long were you a member of the Portland Cement Association?

A. A great many years.

Q. More than ten?

A. Oh, yes.

Q. Was there an overcapacity in the cement production here in this area of California at any time during the operation of your company?

A. I am not in a position to know.

Q. Where is the selling territory of your mill?

A. Why, we distribute cement in Arizona, Southern California, Southern Nevada, California, Oregon, and Washington.

Q. Has there been a widening of that territory in recent years?

A. Yes. About four years ago we established a
8613 transportation system. We load our boat,—we have a large boat that will carry about 40,000 barrels of cement. She is loaded in bulk at Davenport and we transport that to Portland and to Long Beach.

Q. Do you have silos there?

A. Stockton, Oakland, yes.

Mr. Zimmerman: May I have that last answer?

Examiner Norwood: Read it.

(Last answer read.)

A. Stockton and Oakland Harbor. That is where we have the silos established.

By Mr. Wooden:

Q. What effect has your water transportation and silo arrangement had upon the price structure in those areas where you have shipped?

A. None that I know of.

Q. When you go into those territories do you aim to make your delivered price the same there as the mills in those areas?

A. We do.

Q. Have there been cases where they have lowered their prices when you have come into those territories?

A. Not that I know of.

Q. Is your Davenport mill a basing point?

A. What do you mean by "basing point"?

8614 Q. Well, I will let you answer that as you wish.

A. Well, it is one of the points at which we establish prices from, based on the freight rate.

Q. What is your mill price at that point?

A. The price at which we sell the dealer at the present time in Davenport, packed in paper bags, subject to a cash discount of 10 cents per barrel, is $2.20 per barrel.

Q. Do you have a certain area adjacent to your Davenport mill in which that mill price governs the destination prices?

A. As far as our company goes, yes.

Q. What is that area?

A. There is no fixed area; depending on the freight rate.

8615 Q. What is that approximately at the present time?

A. I couldn't give you an accurate statement of that, sir.

Q. Does it include the territory south of San Francisco in the vicinity of Santa Cruz and San Jose?

A. Just around Santa Cruz and not San Jose. I think there is a mill closer to San Jose than we are.

Q. And what is that?

A. Well, that is the plant at Redwood City.

Q. Is that the Pacific?

A. The Pacific Portland Cement Company's plant.

Q. Was there a time when your Davenport mill was the only basing point in northern California?

A. For a short time following the war, prices established by the War Industries Board.

Q. It was the only one?

A. For a short period, yes.

Q. When did it cease to be the only basing point mill? Was that in 1929?

Examiner Norwood: The thing is, is the date—

Mr. Leisure: When did it cease, and there has

8616 been no testimony so far that it ever did.

Examiner Norwood: If he gives the date—

Mr. Leisure: I don't know whether it did or not.

Examiner Norwood: If he gives the date when it ceased, wouldn't that carry the implication?

Mr. Leisure: I would like to know the facts, first. I don't know whether it did or not.

Examiner Norwood: All right, then, read the question.

Mr. Wooden: I understood him to say that there was a time when it was the only basing point and that was no longer true.

The Witness: At the present time it is not the only mill on which prices are based in northern California. The date on which it ceased, I don't know.

Examiner Norwood: There was a time when the condition obtained when it was the only mill?

The Witness: There was a short period during the war; yes, sir.

By Mr. Wooden:

8617 Q. Well, didn't that continue, Mr. Gay, for a good many years afterward? Wasn't 1929 the approximate time that it changed?

A. I could check the record, but I cannot tell you, sir, from memory.

Q. Can you say what brought about the change?

A. Why, one of the companies came out one fine day with a price sheet based on all mills.

Q. Based on, in other words, a price sheet based not only on Davenport but on the location of all the other mills?

A. Mills in central California.

Q. Even though it didn't have mills at those various points?

A. Oh, no, where there were mills.

Q. Yes, but it didn't have, the company that came out with that change?

A. That is correct.

Q. What company was that?

A. I think it was the Henry Cowell Lime Cement Company.

Q. Now, during the time when your Davenport mill was the only basing point mill in this area, the other mills added to the freight from Davenport to destination in order to determine their delivery prices?

A. I don't know what they did.

Q. Haven't you found that the destination prices
8618 of the various mills are ordinarily the same?

A. Yes.

Examiner Norwood: What is meant by coming out with a price sheet based on all mills? Is that figured on the same mill net for each mill in this territory?

The Witness: That is what happened, taking the same base at each mill plus freight to destination.

Examiner Norwood: Well, it wasn't quoting prices for anybody but itself.

The Witness: It was only quoting for itself.

Examiner Norwood: But the figures were the same as all the other mills would have quoted, this identical mill net plus—

The Witness: It so developed. It so developed.

Examiner Norwood: Yes.

By Mr. Wooden:

Q. Well, you had the practice, did you not, of when you were basing wholly on Davenport of adding an amount for freight from Davenport to destination?

A. Yes, sir.

Q. And you ordinarily found that the other mills had the same destination prices?

A. As a rule.

Q. As you did?

Now, your $2.20 price that you mentioned, how long
8619 has that been in effect?

A. I would have to refer to the records to check that, but for a long period.

Q. Have there been any substantial changes in the last three or four years?

A. No.

Q. Any changes at all that you can recall?

A. Oh, there have been changes.

Q. Which way?

A. Both ways, up and down.

Q. Have there been any changes of a substantial character?

A. As far as the price sheet is concerned?

Q. Yes.

A. No.

Q. Do you sell cement right in the towns where other mills are located?

A. If I had an opportunity, I would.

Q. Well, do you really do it, I mean?

A. Have we done it?

Q. Yes.

A. Yes.

Q. You have customers there?

A. Oh, yes.

Q. Can you name several such places?

A. Well, for instance, Redwood City is the closest at hand.

8620 Q. Do you sell in Redwood City?

A. Quite a quantity.

Q. What others?

A. Merced.

Q. Any others?

A. Bakersfield.

Q. Do the other mills in this area come into your locality?

A. I am sorry to say they do.

Q. They have regular customers right at the door of your mill, so to speak?

A. Yes, sir.

Q. And, as I understand it, when they do that, they make their delivery prices in those locations the same as yours?

A. As far as I know.

Q. You would know it if they didn't, I presume?

A. I think so.

Q. Do you sell and ship cement even beyond the mills of others in this area; that is, on the other side of them?

A. I don't know that I understand what you mean.

Q. Well, there is a mill at Kentucky House, one at Merced.

A. Well, that is so isolated we haven't shipped cement into Kentucky House, but we have shipped cement into nearby stations.

Q. You ship and sell beyond there toward the east?

A. Yes.

8621 Q. Even into Nevada?

A. Yes, sir.

Q. Do you obtain in some instances a larger return than your mill price at Davenport?

A. It is not possible to get more than the mill net.

Q. You do, however, figure your delivery prices by rail, do you not?

A. Yes, sir.

Q. Do you make some deliveries by truck?

A. We do.

Q. Or water?

A. Not by water.

Q. Doesn't the truck delivery operate to give you a somewhat larger mill net than the—

A. Not noticeable.

Q. —than the base price?

A. Because there are incidental charges that we have to meet that balances it up very closely.

Q. But there are some instances? I am not speaking on the average or on the whole. There are some instances of where your truck delivery gives you a larger mill net than your mill base?

A. I wouldn't say so. When you figure out the cost incidental to the loading of trucks, and so on.

Q. Haven't there been some particular instances,
8622 Mr. Gay, when truck deliveries have been made from your mill at less than the cost of delivery by rail?

A. I should say that there have been instances where the cost of transportation from our plant to destination has been less than the cost by rail.

Q. Did you report to or fill out a questionnaire for the Clark & Burns study?

A. Several years ago?

Q. Yes.

A. Yes.

Q. 1935?

A. (Witness nods affirmatively.)

Q. Didn't you report there some cases where your truck delivery had the result of increasing your mill net?

A. I don't recall.

Mr. Leisure: One moment, please. One moment.

By Mr. Wooden:

Q. Is your mill base price at Davenport built up to include the various elements of cost and margin of profit that you desire to obtain?

A. Well, that is the only way we get profit is from what we get for our cement.

Q. You mean your mill net?

A. Yes, sir.

Q. What is the minimum mill net that you obtain?
8623 A. I don't recall.

Q. Approximately?

Do you have any base below which you will not go?

A. It depends on conditions surrounding—if I have an obligation, for instance, in Honolulu we ship a lot of cement over there. While we get a very low net for it, we have served that company for many, many years in the hope that something will clarify later on. We continue to take that low net.

Q. You have a pretty low mill net when you get into Arizona?

A. We ship by boat to Long Beach, and from there on we have practically the same rates as the other mills in southern California would have to Arizona points.

Q. But your total cost of delivery there would be greater than the southern California mills, composed of both—

A. Yes.
Q. —both water and rail?
A. Yes.
Q. What is the area, territory, in which your mill net is the least?
A. That is rather hard to say. Of course, Arizona would be the lowest mill net.
Q. I suppose you realize a very wide variation in the mill net that you obtain from customers in different
8624 localities?
A. We do.
Q. From day to day?
A. We do.
Q. Does your mill net in some cases run as low as $1.50?
A. Yes.
Q. Lower?
A. Yes.
Q. As low as $1.25?
A. Well, on Honolulu business, yes.
Q. And in between those lower figures and the upper figure of $2.20, you realize from day to day a wide variation in the mill nets from various customers in different localities?
A. You have asked for a mill—you have asked for a mill net. A mill net is free of all cost or cash discount or tax, or anything of the kind.
Q. Yes.
A. The $2.20 price that you use includes those tax and the cash discount.
Q. All right. But allowing for that factor, there is a wide variation from day to day?
A. There is a variation.
Q. Between the mill nets?
A. There is a variation.
Q. Yes. Suppose you take off the cash discount
8625 and the package allowance from the $2.20, what is the strip price?
A. $1.90.
8626 Q. In the days when your Davenport mill was the only base in this area, did you print and publish delivered price lists figured on the basis of your Davenport mill price?
A. We did.
Q. Did you distribute those price lists to other mills in this area?

A. We did.

Q. Have you continued to do that since that time?

A. We give them to our customers. We distributed them to our customers and to our competitors.

Q. When the change came from the single base point at Davenport to bases at other mills, did you incorporate in your printed price lists the base prices and the destination prices figured on the other mill bases?

A. Will you repeat that question, please?

Examiner Norwood: Read it.

(Question read.)

A. Our action following the naming of prices based on other mills was to follow a price sheet that was put out by one of the other companies.

Q. What was that?

A. That was based on all the mills.

Q. What company was that?

A. That was the Cowell Company.

Q. And since that time your price lists, have they 8627 included base prices at other mills and destination prices figured thereon?

A. Well, now, you have asked two questions there. Did they include base prices at other mills? It has never been our policy to issue a price based on a mill. We base from other mills to destinations.

Q. But your price lists have included, have they not, prices at the location of other mills?

A. Not in every instance, no.

Q. In many cases that is true, isn't it?

A. Well, you take Merced, we served Merced long before there was a plant there. That applies to Red Wood City the same way. We served Red Wood City long before there was a plant there. That price is included. We have quite a distribution there.

Q. You quoted prices at Kentucky House, haven't you?

A. No, I don't think so.

Q. You quoted a price at Cowell?

A. Well, that is in the territory that we serve quite abundantly. It depends on the trade condition.

Q. You had customers at Cowell?

A. Not immediately at his mill, but within a couple of miles, nearby towns there.

Q. Kentucky House you had?

A. You asked me that before.

8628 Q. Yes. You had customers there?

A. No, we haven't had any customer, not at Kentucky House.

Examiner Norwood: How would you quote a particular customer under that all-mill basis system? Would you quote it in every instance as your base plus freight? Supposing that you were the nearest mill to the point of delivery and there was another mill that was, we will say, next nearer. Which would you base it on?

The Witness: If we were issuing a price sheet at a new station today—

Examiner Norwood: I mean quoting a customer.

The Witness: We would quote from our price sheet.

Examiner Norwood: You would quote, then, your mill net plus the freight from your mill, would you?

The Witness: If we were the nearest mill to destination, yes, sir.

Examiner Norwood: And you wouldn't quote, in case the nearest point was far away from the point of delivery —you would not base your quotation on freight from their mills?

The Witness: I would base the quotation on the freight nearest to destination. I would have to do that to meet competition, if there was—

Examiner Norwood: Your competitor, then, would base his price on your mill in that case, wouldn't he?

8629 The Witness: I assume he would.

Examiner Norwood: Haven't you a margin there if you know that he has to pay so much, say $3, from your nearest competitor, and you can deliver it so as to set it at the same price and make more profit than he would? You would make the difference in the freight? Do you take advantage of that?

The Witness: We have to absorb the difference in freight as to meet competition at destination.

Examiner Norwood: In that case where your nearest competitor is further away, wouldn't you take your freight advantage; meet the nearest competitor's price and take the freight advantage of the difference; with the different conditions you would have to absorb freight?

The Witness: We have sometimes to absorb freight.

Examiner Norwood: Yes.

The Witness: But we never get higher than our basing price.

Examiner Norwood: But if your freight is less than your nearest competitor would you not take that advantage?

The Witness: Certainly; on the other had, he would absorb if the distance is greater if it was to his advantage.

Examiner Norwood: But you would base it,
8630 then, on your nearest competitor's mill?

The Witness: Oh, yes.

Mr. Wooden: Your Honor, the witness' mill is a basing-point mill. It isn't as though it were a non-basing-point mill and able to add, at times, the freight from the basing point to the locality—

Examiner Norwood: Under the system he referred to it is all basing-point system, what I was questioning him about; based on all mills.

Mr. Wooden: That is what I was seeking to do, Your Honor.

Examiner Norwood: Go ahead.

Mr. Wooden: Will you mark this for identification, please?

(The document referred to was marked "Commission's Exhibit 1211," for identification.)

By Mr. Wooden:

Q. Is the pamphlet I show you, Mr. Gay, marked Commission's Exhibit 1211, for identification, the current price list of the Santa Cruz Company?

A. That is the last one we issued; yes, sir.

Q. I have asked you, I believe, for a complete set of the lists for the last several years. Do you have those available now?

A. I haven't them with me. We only got word of
8631 it this morning and they are being collected.

Q. I will offer this and ask you some questions about it and we will omit that one from the ones you are collecting.

Examiner Norwood: Any objection?

Mr. Leisure: No objection.

(COM. EX. 1211 was offered and received in evidence.)

By Mr. Wooden:

Q. Now, Mr. Gay, as I understand it, this price list of yours, Commission's Exhibit 1211, contains the delivered prices at stations in Northern California and Nevada, in-

cluding delivered prices that are based upon other mills as well as your own?

A. That is correct.

Q. And you have in the list, do you not, a quotation for each point at which there is another mill?

A. I don't know.

Q. Well, I will refer you to Cowell, Davenport, your own mill, Kentucky House.

A. Is Kentucky House in there?

Q. Yes; and Redwood City.

A. Yes.

Q. Now, those, I take it, are the base prices of
8632 those mills at that point, are they not?

A. Well, just let me see it, please.

(Witness refers to Commission's Exhibit 1211.)

A. Those are the prices that the cement—the delivered cement—are based on at other destinations at the present time.

Q. At those particular mill points those are the mill base prices at those points, are they not?

A. That is correct.

Q. And in the territory that is adjacent to those other mills you use those base prices in calculating the destination prices?

A. Our price sheets have been in vogue so long that we rarely use those prices.

For instance, the whole territory is covered by stations and new stations are established, one between two stations, perhaps. In that event we would take the lowest freight rate from the mill nearest the destination.

Q. But you figure from the other mill, and the other mill base price, to that destination?

A. If the other mill were closer than ours, yes.

Q. Do you get your price lists out some time in advance of their effective date?

A. No. They are published on practically the date they are effective. The little figure in the corner
8633 will indicate the date they are put on the press.

Q. That is some time in advance of the actual effective date, is it not?

A. I think not. Isn't there a date up there?

Q. "Form 4—5-25-350; effective June 1, 1938."

A. See, that was put on May 25; we printed 300 copies, effective on June 1.

Q. You get them out in advance; you circulate them to whomever receives them in advance?

A. They are never distributed until the day before they become effective; yes, sir. That is, they are put in the mail the night of the day before they become effective.

Q. As I understand it, then, that particular list was printed on May 25 and made effective June 1; is that right?

A. That was sent to the printer May 25, and it was distributed on the night before the first of June.

Q. What distribution do you make of the printed lists that you get out?

A. We send them to all dealers handling our cement, as well as our competitors.

Q. That applies to all territory in which you do business; for instance, in Oregon and California as well as in this area?

A. Yes.

Q. Does it also apply to Nevada and Arizona?

8634 A. We do very little business in Nevada.

Q. At the same time the lists are distributed and applicable there, as far as shown?

A. As far as they go, yes.

Q. Will you name the competitors to whom your lists have been distributed in this way?

A. I don't know that I can do that. I can name you the competitors here.

Q. Well, name as many as you can.

A. Starting in here with Pacific Portland Cement Company, Calaveras Cement Company, Cowell Company, Yosemite Portland Cement Company; and going south, Riverside and Southern California, California Portland Cement Company, Southwestern Portland Cement Company, Monolith.

Q. California?

A. I mentioned California.

Q. You did. And up in the other direction, in Oregon, who would you name?

A. We would send one to the Oregon Portland Cement Company and one to the Beaver Cement Company.

Q. And in Washington?

A. I don't think we distribute any in Washington, that I have any recollection.

Q. You have had a price list for Washington, have you not?

A. A few stations, yes.

8635 Q. Would you handle distribution of those in the same way you describe as four—

A. That is a long time ago and I assume we did. I don't know definitely.

Q. Have you sent any of your lists to the Ideal or Colorado Cement Company?

A. No, sir.

Q. Do you receive from these other companies that you have named,—do you receive their price lists?

A. Frequently.

Q. From which ones?

A. I can't tell you.

Q. Can you name any?

A. Well, we have had price sheets from the Cowell and from the Southwestern, from the California, from the Riverside, and a long time ago from the Pacific Portland. I don't know whether they publish a price sheet now, or not.

Q. Do you get price lists of the Calaveras?

A. I don't know that they publish a price sheet.

Q. Have you gotten price sheets of the Oregon and Beaver companies, in Oregon?

A. I don't recall ever having seen one of their price sheets.

Q. As I understand it, when you put out your price lists for Southern California and Arizona and South-

8636 ern Nevada, you make your destination prices in those areas the same as the destination prices of the mills in those localities?

A. We have taken their price sheets and followed them in that territory.

Q. Is that what you have done in the case of Oregon? Have you followed the lists of the Oregon companies?

A. As a rule, we do.

Q. Mr. Gay, referring to this price list, which is Commission's Exhibit 1211, will you explain what the letters and figures in front of each destination mean?

A. Well, that is for our convenience. The letters indicate the station from which we would ship, if nothing interferes with it; where we would get the largest mill net and the figures indicate the numbers we have assigned to the salesmen covering that district.

Q. Will you state what the various letters mean, other than Oakland? I mean, so that we will know what each refers to.

A. Well, the first letter on the station list is Abbott, California. The prefix letter is "S," which means it would be shipped from our silos in Stockton and the next letter is "4," which means it would be in charge of
8637 salesman 4 covering that district. There is also letter "O," which indicates Oakland Harbor; and the letter "D," which indicates Davenport. Those are the only three letters which there are.

Q. Do your salesmen have any discretion in—

A. No, sir.

Q. —departing from the prices in the price list?

A. No, sir.

Q. Do you pretty well adhere, yourself, to those printed prices in quoting and selling?

A. It is our practice.

Q. Do you make the same prices in quoting on bids to the State Governments and subdivisions that you have in your printed price lists?

A. That price list represents the price at which we would sell to a dealer handling our cement, or to anyone at destination. We would quote that price ordinarily on ordinary jobs to any department of the State Government except the relief agencies.

Q. And is that the price that you quote on bids to the Federal Government, as well?

A. Depending on the job. Ordinarily, single carloads, or so, we would quote that price. If it was a large job, where it was—we felt that we ought to do as best we could, sacrifice some of our profit, we would quote—we have quoted lesser prices.

8638 Q. Meaning taking less than the $2.20 at your mill?

A. Less than the $1.90 net.

Q. Less than the $1.90?

A. Yes, sir.

Q. You have quoted on a lower basis than the $1.90 mill net on such jobs as Boulder Dam and other large projects of that sort?

A. Yes, we did. We have.

Q. But ordinarily, as I understand it, your price to States and subdivisions of States, except for emergency

relief agencies, are the same as your prices to dealers; is that right?

A. Except on large projects or where we know from past experience that it is necessary to meet a lower price that somebody else may have quoted.

Q. Do you find that the terms and conditions of sale of the other mills in Northern California are the same as yours?

A. Approximately.

Q. Well, as to cash discount, for instance, is it the same?

A. I think the cash discount is uniform.

Q. And what is that?

A. Ten cents per barrel for payment on the 10th of the month following the month in which the shipment is made.

Q. Now, is there a dealer's allowance from the price, or do you quote the dealer net?

8639 A. Well, at one time we used to quote a gross price subject to a dealer's allowance, but when the Robinson-Patman bill became operative, we changed that so as to have one price to everyone, and assuming that they would add that, themselves.

Q. What was the dealer's allowance during the time?

A. I think it is 20 cents a barrel, I think, is the last we had. That has changed at times.

Q. And do you now require, under the California law, the dealer to charge 20 cents in addition to their cost?

A. We asked them to do that.

Q. That is stated in your price list?

A. Yes, sir; right on the face of the price lists.

Q. You have dealers in Nevada?

A. We have one dealer in Nevada.

Q. You have dealers in Arizona?

A. Our cement in Arizona is sold through Graham Brothers of Los Angeles. I am not in direct contact, or our city office is not in direct contact with the sales made in Southern California or Arizona.

Q. You have dealers in Oregon?

A. Yes, we have some dealers in Oregon. That is handled through our Portland office at Portland, Oregon.

Q. Do you have here, Mr. Gay, the correspondence,—the two letters between you and the Department of Highways of Nevada which I asked you for yesterday?

8640 A. Mr. Clark brought those here. I handed them to Mr. Clark this morning.

(Paperwritings were handed to Mr. Wooden by Mr. Clark.)

The Witness: Is it all right to let those go out of our file without copies, Mr. Clark?

Mr. Clark: I have to trust to the mercies of the Examiner on that.

Mr. Leisure: Mr. Wooden has copies, and I suggest that Mr. Gay be allowed to take his originals back.

Examiner Norwood: I think that is agreeable to everybody.

(The document referred to was thereupon marked "Commission's Exhibits 1212-A and 1212-B," for identification.)

By Mr. Wooden:

Q. Mr. Gay, I am showing you two papers, marked for identification "Commission's Exhibits 1212-A and B." Will you identify them as authentic copies of a letter which you received from Robert A. Allen, State Highway Engineer of Nevada, and your reply, dated December 30, 1935?

A. I do.

Mr. Wooden: I will offer these copies, Your 8641 Honor, in evidence. The originals are here, and I am glad to return them and substitute the copies (handing paper writings to Mr. Clark).

By Mr. Wooden:

Q. Mr. Gay—

Examiner Norwood: Just a moment. Is there any objection to that?

Mr. Leisure: No objection.

(COM. EX. 1212-A and 1212-B was offered and received in evidence.)

Examiner Norwood: The copies are being received by agreement.

By Mr. Wooden:

Q. Who in your organization handles the detail of the preparation and printing of your price lists?

A. Our traffic manager.

Q. Who is he?

A. W. J. Higgins.

Q. Do you provide him with any of the information that he uses in making up the lists?

A. I don't know that I understand your question, Mr.—

Q. Well, I will put it this way: Who provides him with the data that is used in making up the price lists?

8642 A. Well, it is mostly provided from the freight rates, by the freight tariffs.

Q. Yes, but there are other factors in the delivery prices than the freight. Who provides him with the remainder of the information?

A. I don't know to what information you refer to. I would be very happy to answer if you just make it more plain.

Q. Well, these price lists include—they are delivered prices including the freight and some mill base, are they not?

A. Well, he knows from experience. He has been doing this for a lot of years, and he knows that we base the price from the nearest mill to destination.

Q. Do you know how he ascertains what the base price at the nearest mill is?

A. Well, I assume that he learned it the same way I did, when the price came out on that particular occasion to which I referred.

Q. You mean back some years ago?

A. Many years ago; yes, sir.

Q. Haven't there been some changes in the base prices since that time?

A. There may have been fluctuations in it.

Q. Well, that is what I mean. Do you know how he ascertains when there are changes or fluctuations?

8643 A. Well, that might originate with me. The chances are I would gather that information and pass it on to him.

Q. That is what I am seeking to ascertain.

A. Yes.

Q. Whether you provide him with all the information other than the freight rates.

A. He hasn't any other source in our department, in our office, to go to.

Q. Have you submitted the lists with their various delivery prices to other mills to see if their base prices and delivery prices were correct?

A. I never have.

Q. Did you ever have any representation made to you that there were any errors in your lists?

A. I don't recall any.

Q. Do you know what, if any—what method is used for translating the freight rates in hundredweight terms to barrel terms?

A. Yes; we use a factor of 19 in sacks cement; that is to say, $1 per ton is 19 cents per barrel. Is that what you mean?

Q. Yes. You mean the dollar per ton is the freight rate?

A. If the freight rate were $1 per ton, the cost per barrel would be 19 cents.

Q. Do you work out a conversion table that shows
8644 what the figures are in terms of barrels for each change in freight rate?

A. We have never published any such a—

Q. Do you have such a basis of calculation? You have such a basis of calculation, I suppose, though?

A. I have a—I have a copy of a book published by the Riverside Portland Cement Company many years ago.

Q. You use that for the purposes of converting it into barrels?

A. I don't; I don't.

Q. Your traffic man does?

A. I don't know that he uses that particular one,—just what particular book or table he uses. He must use a similar table, but what he is using I don't know.

Q. Do you use 376 pounds as the basis of calculation?

A. Yes, sir; except where cement in sold in bulk.

Q. Does your freight traffic man, who compiles these lists, obtain any information from freight traffic men in other mills concerning freight rates?

A. Well, I suppose they do, from time to time,—no established regularity, however.

Q. You base that upon your general knowledge of how the thing is done?

A. Yes, sir.

Q. Does your freight traffic manager correspond
8645 with the traffic managers of other mills on such subjects?

A. I doubt it.

Q. They meet together occasionally?

A. Well, I imagine just like the cement companies, we

are all living in San Francisco, most of us, in addition to which the railroads have hearings, the Railroad Commission has hearings, and our traffic men are thrown together; and then there is the Transportation Club. They all belong to that here, so I guess they meet frequently, but not for a direct purpose of discussing the question of freight rates as applicable to cement.

Q. But incidentally in that connection?

A. That is all.

Q. Incidentally for that purpose?

Mr. Leisure: Well, now—

A. No. No.

Mr. Leisure: What does "incidentally for that purpose" mean?

The Witness: No.

Mr. Leisure: The witness hasn't said that.

The Witness: They don't meet for that purpose, as I said, Mr.—it is only incidental.

By Mr. Wooden:

Q. But when they do meet they discuss such questions?

A. Not necessarily, no.

8646 Q. I didn't say necessarily, but incidentally?

A. I wouldn't say they did, no. I don't believe they do all the time. It depends on what is on their minds.

Q. I didn't say all the time, but some of the time?

A. I couldn't prove that.

Q. Well, you know what your traffic man does in the line of his duty, do you not?

A. I try to keep pretty close track of him.

Mr. Zimmerman: Mr. Examiner, please, as to the record on the Exhibit 1212-A and B, it may not be clear that the understanding that I believe we had previously that the objection of the Respondent, Marquette, heretofore made as to all exhibits of that type, should stand as to their being immaterial and irrelevant, because there is no connection shown with the Respondent, Marquette, or the Respondent, Cement Institute.

Examiner Norwood: I think it is clear as to all that evidence that the record must connect it up with the particular respondents, otherwise they have their exceptions.

By Mr. Wooden:

Q. Mr. Gay, I notice in your price list, Commission's Exhibit 1211, that you make the destination prices named

to be delivered by truck at your option. Do you sometimes exercise that option?

8647 A. We aim to please our customers, and we usually do what they require, but we just have that there to protect ourselves in the event of some criticism.

Q. In other words, the delivered price obtains even though you deliver by truck at the customer's request?

A. That is correct; yes, sir.

Q. The delivered price is based on the rail?

A. Based on rail freight, yes; that is the only established medium we had until the—

Q. That is, has there been any time when you have delivered loaded for delivery to truck at your mill without regard—without restriction as to what should be done with it?

A. No.

Q. Has that been done here in this area?

A. I never heard of it being done.

Q. By any mills?

A. I never heard of it being done; no, sir.

Q. Have there been any occasions here in recent years where delivery to trucks upset the market?

Mr. Leisure: Now, can we have some definition of what Counsel is getting at here, whether it upsets the market?

8648 It seems to me we should have the facts, and then if those facts show that it did upset the market, we have a correct record.

The Witness: Not that I know of.

Examiner Norwood: Objection overruled.

By Mr. Wooden:

Q. Is this delivery by truck at the customer's request an infrequent thing or is it a rather frequent thing?

A. Quite frequent.

Q. Quite frequent?

A. Quite frequent.

Q. Regular as well as frequent? Some customers take regular delivery in that way?

A. I should say that the larger percentage of delivery from our plant are made by truck.

Q. Do you make truck deliveries in your own trucks or by—

A. No, we hire trucks. We do not own any trucks that deliver cement commercially.

Q. Do you find the delivery by truck substantially cheaper than delivery by rail?

A. As I said before, that all depends; while the rates may be lesser at times from the mill to destination, there are other charges incidental to the loading of trucks and the unfixed hours at which they call at the plant re-
8649 quiring additional labor, that adds to the cost.

Q. But the truck rates, themselves, are substantially lower, are they not?

A. At the present time there isn't very much difference.

Q. They have been substantially lower in times past?

A. In the past; yes, sir.

Q. And are they not substantially to certain destinations, even yet?

A. I would have to make a study of that. I doubt it.

Q. There is just as much certainty in the delivered price delivered by truck as by rail, in the way you handle it, is there not?

A. Yes, sir. The customer has the advantage of having it delivered perhaps a little closer to the point of usage.

Q. Is your truck delivery applicable to any dealer or purchaser who wishes it?

A. Yes.

Q. Do you make some truck deliveries into Nevada?

A. No, I don't think we have.

Q. What is the farthest limit at which your truck deliveries are made?

A. It depends on the question of how much the truck man will charge to go there. There is no fixed territory.

Q. I mean, as you have experienced it. How far does the truck delivery go?

8650 A. Not much out of California, from our plants.

Q. In terms of mileage?

A. Well, I can't answer that.

Q. A hundred, two hundred miles?

A. My understanding is that about 200 miles is a very long limit for a truck to haul; that is, from the cement plants here.

Q. Does your company file land-grant rates with the Cement Institute?

A. No, we never did. We haven't any way of producing land-grant rates.

Q. Have you filed land-grant rates with the Pacific Coast Institute?

A. No, sir.

Q. Have you received from the Pacific Coast Institute information as to land-grant rates?

A. I don't recall ever seeing any data. We get ours directly from the railroad companies.

Q. Did you receive any land-grant information from the Chicago office of the Cement Institute?

A. It seems to me that several years ago there was something came out.

Q. Well, since 1935?

A. Well, even so—I think there was a letter came out.

Q. I mean the land-grant rates, themselves.

8651 Didn't you obtain land-grant rate information?

A. We never got it from the Cement Institute; no, sir.

Q. I am referring to the land-grant rate applicable to certain federal projects.

A. That is a letter that I refer to, but if we were looking for land-grant rates we would go to the railroad for them. We don't depend on any other source than the railroad.

Q. You would have to know what the land-grant rate was from other mills as well as your own in order to—

A. We wouldn't only ask for the land-grant rates for our own mill; we would ask for land-grant rates from all competing mills so that we would be able to figure where we were going. There is nothing mysterious about—

Q. Is that in order that you might attempt to make your delivered price the same as other mills?

A. Of course, I would like to know how much money I can get for this and get the job, see?

Q. Do you aim to make your price competitive with other mills at the destination?

A. Yes, sir.

Q. And by that you mean make your price the same as theirs?

A. I would try.

8652 The witness identified Com. Ex. 1213 A and 1213 B as looking as though it might be the letter which the witness has referred to as having come from the Cement Institute showing rates. He doesn't know where that information came from.

Examiner Norwood: What is it?

The Witness: What is it? It says here, "Statement

of various eastern and western cement mill bases as of January 7, 1937".

The witness does not recognize "that" as a copy of a paper which Mr. Casto, the representative of the Commission, found in his files. Perhaps he did. The witness does not recall Mr. Casto inquiring about the source
8653 of that particular paper. He may have. The witness went over a great many papers with him.

Q. Do you not recall informing him that it is a paper that you obtained from Mr. Keller?

A. No, sir, I do not. If I did such a thing as that there must have been a letter attached to the original that indicated where it came from. It made no impression on me.

Q. There is no letter, as far as I know.

A. I see.

Q. Do you mean to say that you have never seen that paper or a duplicate of it before?

A. This paper doesn't mean anything to me and while I am not trying to avoid answering any question, I don't recall ever having seen it before, although I may have.

(Mr. Clark gets document from the witness and looks at same.)

Mr. Wooden: I am not offering it at the present time. I don't see any need of a study of it being made.

Examiner Norwood: Go ahead.

Mr. Wooden: Mark these, please.

(The documents referred to were marked "Commission's Exhibits Nos. 1214 to 1225, both inclusive, for identification.)

By Mr. Wooden:

Q. Mr. Gay, I am showing you a number of pur-
8654 ported price lists of the Santa Cruz Portland Cement Company numbered for identification from 1214 to 1225, inclusive. Will you identify them as being what they purport to be?

A. I identify them.

Mr. Wooden: I will offer them, Your Honor, with the understanding that when other lists are produced there will not be any duplications of these.

Mr. Zimmerman: I couldn't hear that statement.

Mr. Wooden: That when others he is endeavoring to collect and produce are produced, we will see that there are no duplications.

Mr. Zimmerman: Oh; all right.

Examiner Norwood: Any objection?

Mr. Leisure: I don't think so. I will see in just a moment.

Mr. Zimmerman: If the Examiner please, as to the Respondent Marquette, they are objected to as merely encumbering the record.

They are not relevant or material to any issues in the Complaint or in any wise connected with the Respondent, Marquette.

Examiner Norwood: Any further objection?

Mr. Leisure: We have no other objection than that, thank you.

8655 (COM. EX. 1214 to 1225, inclusive, were offered and received in evidence.)

Q. Mr. Gay, are there any destinations in this territory where you sell where so-called arbitrary prices apply or prevail?

A. There may be.

Q. Can you name any such?

A. No, I cannot.

Q. How about Vancouver, Washington; is there any?

A. I think so.

Q. So far as you know, then, the prices in your price list are all the equivalent of a mill base price somewhere, plus a rate to destination?

A. In Washington, the State of Washington, we do the same as we do in southern California. We follow the prices that have been established by other mills.

Q. You don't know whether any of those are arbitrary?

A. We haven't any way of knowing.

Examiner Norwood: You can figure their mill net, can't you?

The Witness: I have never attempted it, if Your Honor please. We have only quoted destination prices.

Mr. Wooden: Mark this, please.

8656 (Whereupon the document referred to was marked "Commission's Exhibit No. 1226," for identification.)

By Mr. Wooden:

Q. Mr. Gay, I show you a paper marked Commission's Exhibit 1226, for identification. Will you identify it as an authentic copy of a letter received from Mr. Newlands, of Portland (handing document to the witness)?

A. Yes.

Mr. Wooden: I will offer it in evidence.

8659 Q. Mr. Gay, have you attended meetings at which were present Oregon mills and California mills shipping into Oregon?

A. You mean just the Oregon mills and the California mills shipping into Oregon?

Q. Yes.

A. I don't recall any such.

Q. With reference to this particular exhibit, Mr. Newlands' letter to you, was there a meeting held in your office as suggested by Mr. Newlands?

A. I haven't any way of knowing, but as Mr. Casto took that letter from our file, if there was a reply to it, it should have been there. I don't know that any such

8660 meeting was ever held, and it didn't refer to only the cement companies shipping into Oregon, it referred to all California manufacturers.

Examiner Norwood: Well, pursuant to that letter, was there any kind of meeting held in your office?

The Witness: I can't answer that, Your Honor. I don't recall. There is nothing in the files to indicate it.

By Mr. Wooden:

Q. The letter refers to an invitation extended to all California manufacturers interested in shipping into Oregon, and suggested a meeting at your office.

A. That may have been in connection with the Portland Cement Association, because at one time the officers of the Portland Cement Association in Oregon was abolished, and I have no doubt that that subject was there, but if my memory serves me, I don't think any such meeting was held at that particular time to discuss that subject.

Q. What subject?

A. The question of the opening of an office for the Portland Cement Association in the State of Oregon, which was closed temporarily.

Q. Have you had meetings, or have you attended meetings of other California manufacturers shipping into Oregon?

A. Yes, I have.

8661 Q. To discuss questions of the marketing of cement in Oregon?

A. No.

Q. What has been the purpose of the meetings that you referred to?

A. The meetings in Oregon would be in connection with the Portland Cement Association, promotion work.

Q. You have had no meetings at which you discussed market conditions and prices?

A. I don't recall any such meeting; no, sir. It would be against our policy.

Q. Mr. Gay, I notice that some of your price lists in describing the classification of the trade which you recognize as being sold direct excepted the Federal Emergency Relief Agencies.

A. Correct.

Q. And some others of your price lists made no reference to it. Can you explain that?

A. Well, when we—that is, in Northern and Central California, where we established prices. We don't—we follow the prices in Southern California. They are not on there because we follow what they do. Those terms were established under the federal—under the code; the exceptions were all taken from the code.

Q. Well, the article of the code was suspended, 8662 was it not, under which all of those classifications of trade were given?

A. I thought the example they set was very good, and I continued it.

Q. Do you follow the same general type of classification of trade that you found existed in other parts of the country?

A. When we adopted the prices in Southern California, we adopted their terms also.

Q. But as to the matter of which classes of trade should be sold direct, your policy was the same as that obtaining in other parts of the country?

A. Practically the same.

Mr. Leisure: What parts of the country? It seems to me the question should be clearer. I think the witness has been talking about California.

Mr. Leisure: Heretofore we have been talking about the State of California.

Examiner Norwood: I think if he just tells what the policy is we can compare these policies.

Mr. Wooden: It is stated in the price lists.

Examiner Norwood: I think that objection should be sustained.

By Mr. Wooden:

Q. You attended meetings and worked out plans
8663 for the classification of trade to be sold direct during the code period, did you not, Mr. Gay?

A. Just prior to the code period; yes, sir.

8664 Q. Prior and during?

A. And during, yes.

(Whereupon certain documents were marked as "Commission's Exhibits Nos. 1227 through 1230," both inclusive, for identification.)

By Mr. Wooden:

Q. Will you identify papers marked as Commission's Exhibits 1227, 1228, 1229, and 1230, as copies of papers from your files covering meetings which you had with regard to proposed codes of fair competition in June, 1933, (handing exhibits referred to to witness)?

A. Yes, sir.

Mr. Wooden: I offer them in evidence.

8666 (COM. EX. 1227, 1228, 1229, and 1230, were offered and received in evidence.)

8667 (COM. EX. 1207-C, 1207-E, 1207-F, 1207-G, 1207-H, and 1207-I, were offered and received in evidence.)

Mr. Wooden: Your Honor, in view of the witness' testimony, I wish to withdraw Exhibit 1226.

Examiner Norwood: That leaves a blank number.

Mr. Clark: Was that introduced in evidence?

Mr. Wooden: Yes.

Examiner Norwood: Any objection to that withdrawal?

Mr. Leisure: No objection.

Examiner Norwood: Let the record show permission is given to withdraw Commission's Exhibit 1226. Let the next offer be marked 1226.

(Whereupon, pursuant to agreement, Commission's Exhibit 1226 was withdrawn from evidence.)

8668 Q. Mr. Gay, referring to Exhibit 1227, who are Mr. J. A. McCarthy and Mr. Henderson that are referred to therein?

A. Mr. Henderson is the president of the Pacific Portland Cement Company; Mr. McCarthy is the vice-president and general manager of the Pacific Portland Cement Company.

Q. Referring to your price lists; do you get them out at

regular intervals? What is the basis on which you publish them?

A. We try to avoid the added cost for printing, and we only get them out when there are sufficient changes in the list which make it cheaper to get out a price list. It may be a period of two or three months or if something happens that is unusual we may publish it every month.

Q. Do you have any method of handling changes in between publication of the printed lists?

A. Only to notify our own salesmen.

Q. Is keeping your price list up to date simply a matter of keeping up with the changes in freight rates?

A. Principally so; yes, sir.

Q. In the case of a change in freight rates between the publication of your lists, do you carry on the prices without change until the next publication, or do you immediately follow the change in freight rates?

A. We notify our traveling men and change the price.

Q. Do you sometimes absorb—

8669 A. At the present time—

Q. —emergency freight increases?

A. At the present time there is an advance of fregiht rates authorized by the Railroad Commission, and we haven't put them into effect, yet.

Q. You are absorbing those increases?

A. We are absorbing those costs; yes, sir.

Q. Have you observed whether your competitors are also absorbing such increases?

A. Well, I haven't any particular method of following that out. If it came to my notice, of course—but, there is no established way or system of following that.

Q. So far as you know they made no change in the system of prices on that?

A. So far as I know.

Q. Does the Pacific Coast Cement Institute provide any freight rate service of any sort?

A. They have not, to us; no, sir. My understanding is they do not.

Q. I believe you said you received no land-grant rate information from them.

A. I have not.

Q. I note, according to your current list, Commission's Exhibit 1211, that the price at Merced is $2.30 as against

price at Davenport and Kentucky House of $2.20;
8670 also, at Cowell. Has that been a recent change in the price at Merced, would you say?

A. I would start off first by saying there is a charge from the Yosemite plant to Merced. There is an extra railroad charge, freight charge.

Q. How much?

A. Well, apparently, it must be 10 cents.

Q. That is what I was getting at. That accounts for the difference of the 2.30 rate?

A. Yes, sir.

Q. I also note that the Red Wood City price on your price list is 2.26. Is there some similar freight charge or switching charge in there?

A. Switching charge of 6 cents per barrel.

A. So, making allowances for those switching charges and the freight from the Yosemite mill to Merced, the prices of each mill is $2.20; is that right?

A. That is our present base; yes, sir.

Q. Has there ever been a time in your experience out here, Mr. Gay, when you sold cement f.o.b. mill?

A. Why, we sell to railroads sometimes f.o.b. mill. We sell the Government f.o.b. mill.

Q. When you sell to the Government f.o.b. mill, do you mean on a Government destination cost?

A. Based on—the way we would arrive at that
8671 would be by taking the destination cost, deducting the commercial freight rate from our plant, and adding the land-grant rate from our plant to arrive at it, or from the nearest mill.

Q. Don't you deduct whichever is the lower rate from your Government destination cost?

A. We deduct the commercial rate. Well, we couldn't sell higher than the commercial rate, in any event.

Q. Yes.

A. And so we give the Government the full benefit of the commercial charge where it is greater than the land-grant rate.

Q. Have you quoted the Government f.o.b. mill without regard to Government destination cost?

A. I haven't any recollection, sir.

Q. Did you submit any quotations recently in response to Government invitation for straight f.o.b. mill quotation?

A. I have submitted f.o.b. mill quotations, but they are based on the deduction of the commercial rate.

Q. From the destination cost?

A. From the destination costs; yes, sir.

Q. Are you familiar with the so-called control clause that was used in quoting Government destination costs?

A. That was one that was inaugurated I think during the code period, was it not?

Q. Yes. Is that what you follow?

8672 A. We don't; no, sir. We don't. We quote both the destination and mill price, and mill price based on the deduction of the commercial freight rate.

Q. But you don't make a flat unqualified quotation f.o.b. mill for the Government?

A. If the Government asked us for a quotation in that way, what I would do would be to—and knowing the destination, I would deduct the commercial freight rate, as I said.

Q. But will you quote f.o.b. mill without knowing the destination?

A. Will I?

Q. Yes.

A. Oh, I guess we have.

Q. Have you?

A. Yes, sir.

Q. Consistently or—

A. There is no—I would have no objection to doing it.

Q. Will you do it now if it is asked?

A. If I were asked to do it?

Q. Yes.

A. Yes.

Q. Have you done it recently in response to invitation from the Procurement Division of the Treasury?

A. Yes, I have, but instead of our mill at Davenport, being in an isolated position, it has the highest freight

8673 rates to the large consuming centers, and when the bids were called here for a short time ago for the Central Valley project, I based—I used the price based on our storage at Stockton, which is the nearest point to the central consuming district.

Examiner Norwood: Did that price include the freight from your mill to the place of stocking?

The Witness: Well, that price, if Your Honor please, was the price that I established with the hopes of being within the running on the prices that might be bid by other companies.

Examiner Norwood: Did it include the transportation costs, though, from your mill to—

The Witness: Oh, it included our transportation; yes, sir.

By Mr. Wooden:

A. Well, I want to get all I can up to our basing price, f.o.b. mill without regard to destination point?

A. Well, it would be just like—it would be quite a gamble if I don't know where the material is going. I endeavor to ascertain where the material is going. If I didn't do that, I would be just working in the dark.

8674 Q. You can't make a price, so far as you are concerned, netting all that you want to get without knowing the destination, where it goes?

A. Well, I want to get all I can up uor basing price, which is $1.90 a barrel.

Q. Without regard to where the cement is going, why can't you make a price based upon your costs and what you want to make out of it?

A. Well, we figure we are doing that, sir, when we ask $1.90 a barrel.

Q. In many cases, however, you do not net $1.90 a barrel?

A. That is true.

Q. I asked you, Mr. Gay, to produce certain papers relating to trucking conditions filed with the Trade Practice Committee, or the Code Authority back in May or June, 1935.

A. That is the memorandum that you gave me yesterday, Mr. Clark?

(Mr. Clark nods affirmatively.)

The Witness: I did.

By Mr. Wooden:

Q. Are they available?

8675 Q. Was the paper marked here as Commission's Exhibit 1226, for identification, a communication from G. H. Reiter received by you and dated June 6, 1935?

A. That is our receipt stamp there, sir.

Mr. Wooden: I offer that in the record with the other papers that were produced.

Mr. Leisure: Mr. Wooden, the other exhibit 1226 was withdrawn, but there are statements on the record referring to it.

Examiner Norwood: Yes.

Mr. Leisure: I think it would be confusing to have this exhibit the same number in the record. This should be 1231.

Examiner Norwood: I believe so, yes. Just make that, then, 1231.

(The paperwriting indicated above as marked for identification as Commission's Exhibit No. 1226 was remarked as Commission's Exhibit No. 1231.)

Examiner Norwood: Is there any objection to that Exhibit 1231?

Mr. Leisure: Other than the objection we have had to the Code material, we have no objection.

(COM. EX. 1231 was offered and received in evi-
8676 dence.)

8677 Q. Mr. Gay, will you identify the papers marked Exhibits 1232 to 1266, inclusive, as price lists issued by the Santa Cruz Portland Cement Company?

Mr. Zimmerman: Mr. Wooden, it is not possible to hear you when you are standing so close to the witness.

Examiner Norwood: Read the question.

(Last question read.)

Mr. Zimmerman: Thank you.

A. I do.

Mr. Wooden: I offer them, Your Honor, with the statement that they are exclusive of the ones that were offered this morning.

Examiner Norwood: Any objection?

Mr. Zimmerman: No objection, except as to the similar exhibits made this morning.

(COM. EX. 1232 to 1266, both inclusive, were offered and received in evidence.)

By Mr. Wooden:

Q. Mr. Gay, what rule do you follow in making up your price lists with regard to the disposition of fractions when you translate freight rates into barrel rates?

A. We drop the fraction.

Q. Where above or below the half-way point?

8678 A. Either way.

Q. You drop them always?

A. Yes, sir.

Q. Even though it is three-fourths of the next point you drop the whole fraction?

A. Nine-tenths; we drop it all.

Q. Do you quote on the basis of 376 pounds to the barrel and allow the customer on the basis of 380 pounds per barrel?

A. No, sir; we do not. We only have one price that we quote.

Q. You allow only on the basis of 376?

A. A barrel of cement is supposed to contain 376 pounds of cement.

Q. Exclusive of the sack?

A. Exclusive of the container; yes, sir.

Q. Do you bill on the basis of 380?

A. No, we bill on the basis of one barrel.

Q. 376, in other words?

A. 376. A barrel of cement contains 376 pounds.

Q. Do you have to pay the railroad, or isn't the railroad paid on the basis of 380, including the sacks?

A. They figure—they take a barrel—the freight rate is estimated on barrels except where cement is shipped in bulk, and then it is shipped on scale weight.

Q. Can you tell me whether the railroad company
8679 figures the freight on the basis of 380 or 376?

A. They figure on the gross weight, 380.

Q. And that is what the customer pays the railroad?

A. That is what the customer pays, yes.

I might say that the average varies, you know; it is never below 376; taken on scale weights.

Cross-Examination by Mr. Leisure.

The witness identified Resp. Ex. 25 as a paper he had received; Resp. Ex. 26 and 28 as papers he sent; Resp. Ex. 27 as a paper he received; Resp. Ex. 29 as a paper
8680 he received; Resp. Ex. 30 A and 30 B as a paper he received; Resp. Ex. 31 A and 31 B as a paper he received.

ARTHUR B. SHELBY, called as a witness on behalf
8681 of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

I am vice president and general manager of Calaveras Cement Company and have been connected with it about 11 years. The Calaveras mill is located at Kentucky House, about 50 miles east of Stockton, California, and about 150 miles from San Francisco.

Q. What is the territory in which the Calaveras Cement Company sells cement?

A. Northern and Central California, some slight portion in Nevada.

Our white cement we ship to Southern California and as far east as New York.

8682 Q. Is that your regular Portland cement you ship?

A. No, no, that is white cement.

Q. Do you sell the regular Portland cement in Southern California?

A. No.

Q. Just the white cement?

A. Just the white cement.

Q. Do you have regular dealers handling your product in Nevada?

A. Yes, sir; some few.

Q. You don't sell into Oregon at all?

A. Very seldom.

Q. Do you have any regular customers at all?

A. In recent years we have shipped to Klamath Falls and there might have been one or two other isolated shipments of cars, but in the last several years our shipments there have been practically nothing.

Q. Does your company quote only on a delivered price basis?

A. Yes, with some few exceptions.

Q. What are the exceptions?

A. In the territory adjacent to our mill, where there are no railroad facilities, we sell at our mill.

Q. You mean, do you deliver to trucks that come to your mill?

A. Some, and we make delivery ourselves by truck
8683 to some of those towns.

Q. When you sell, do you sell for truck delivery to towns where there is railroad service also?

A. Oh, yes.

Q. Do you make the same price as though it were delivered by rail when you sell to trucks that way?

A. Yes, sir.

8684 Q. Have you ever sold for truck delivery at the mill without regard to what the purchaser did with it or where he took it?

A. Very, very rarely. As a rule we knew where he was taking it. It would come under the classifications I just gave you.

Q. That is, selling at the rail delivered price?

A. No, at local points in our own territory up there where it is not served by rail.

Q. Does your company use a multiple basing point system in quoting its price?

A. We make our prices in the territory we can reach by basing on our mill. That is, where we have the lower freight rates. Then as we get into the territories beyond that we make our prices as we find them.

Q. You base on the other mills when you get into the other territory, is that what you mean?

A. We find that price.

Q. What is the base price at your mill?

A. $1.90; stripped of everything.

Q. How long has that price been in effect?

A. Oh, I think that has been in effect for a couple of years or more.

Q. Was there a time in your experience when the prices in northern or central California were all based on
8685 Davenport?

A. Yes, sir, the first year we operated, I think.

Q. When was that?

A. That was in 1927 and part of '28.

Q. During that time, on your nearby sales you added the freight from Davenport?

A. Added the freight to Davenport.

Q. That had the effect of considerably increasing your mill net in that particular locality?

A. Well, we had only been in existence about a year, and we were feeling our way to find out just what price

conditions were. Our volume was very low, and we just took the prices as we found them in the territory. We had no prices of our own at that time.

Q. When was it that that basing on Davenport alone ceased?

A. In August, 1929, I think.

Q. What succeeded the method of basing on Davenport?

A. A base at each mill.

Q. How was that change inaugurated?

A. That was inaugurated by a competitor. We were forced to follow it.

Q. Who was that competitor?

A. Cowell Portland Cement Company.

Q. Did it put in a base price at your mill?

A. Virtually so. It had no price at Kentucky
8686 House, but by figuring back, we found that that is what it was.

Q. Did that change from the Davenport base to a base at each mill cause some uncertainty or reduction in prices?

A. Yes, for a while.

Q. How much of a reduction did it cause?

A. Well, it was considerable. I couldn't tell you off hand just what it was.

Q. Was it as much as 40 cents a barrel?

A. Possibly.

8687 Q. Over what period of time did the reduction remain?

A. Well, I thought you had reference to the new multiple base system that Cowell put in there, that that reduced the mill net that we were getting under the Davenport bases.

Q. Yes, that is what I did have reference to.

A. That is still in effect, that basing system, with some exceptions.

Q. But I want the price that was then in effect,—what changes there have been in that.

A. Well, I don't remember the exact dates. There were some changes up and down during the last 10 years.

Q. Do you recall whether or not the Davenport base in 1929 was $2.45 a barrel?

A. I think so.

Q. Including cloth packages?

A. Yes, sir; and discount.

Q. Can you say whether or not in October, 1929, after

the multiple bases were put on whether your mill bases were reduced as low as $2.31?

A. Possibly so. I don't know, Mr. Wooden. There have been some changes, but just what dates and what they were—

Examiner Norwood: When that went into effect, was every mill affected by it? Did they each have the same mill net realization?

The Witness: That I don't know.

8688 Examiner Norwood: Well, these figures that were published as the prices of these other mills, did they reflect that?

The Witness: Well, I don't know the price sheet to which Mr. Wooden refers.

By Mr. Wooden:

Q. Wasn't the same base price put in by Cowell at each of the other mills?

A. Oh, yes, yes. That was on the one you are talking about. You said December. That is what I was looking at. That was in August that that went out.

Q. I am showing you a paper, which was in the file. Is that your letter and your signature in the letter to the Federal Trade Commission?

Mr. Leisure: Could we have that identified so we will know what Counsel is referring to?

Examiner Norwood: Yes.

Mr. Leisure: I don't know what paper he is referring to. He just handed the witness a paper.

Examiner Norwood: Yes.

Mr. Wooden: Just for identification.

Examiner Norwood: He will do that before he goes further, I suppose.

The Witness: Yes, sir.

Mr. Wooden: Give it a number for identification,

8689 Mr. Reporter.

(The document referred to, was thereupon marked "Commission's Exhibit 1267," for identification.)

Mr. Wooden: A letter of June 13, 1931.

Examiner Norwood: That is the paper just identified by the witness?

Mr. Wooden: Yes.

By Mr. Wooden:

Q. Now, with that as a basis, Mr. Shelby, can you state what the course of prices was a few months following the

inauguration of the multiple base prices at the various mills?

A. Well, I presume—

Mr. Zimmerman: Mr. Examiner, it is impossible to hear Mr. Wooden when he stands with his back turned and facing the witness.

Examiner Norwood: Stand back further.

Mr. Leisure: Your Honor, I think that the exhibit should be offered rather than asking the witness to read from it to state what the prices were.

Examiner Norwood: Yes.

Mr. Zimmerman: May I have the question read?

Examiner Norwood: Read the question.

(The question was read.)

8690 Examiner Norwood: The witness will answer that, and he may use this identified paper there to refresh his memory.

Mr. Wooden: That was all I proposed to have him do.

Mr. Zimmerman: I didn't understand that the witness stated that it established multiple base prices at every mill. I understood him to testify that it established a price base at every mill. Now, there is quite a distinction.

Mr. Wooden: Well, that is a matter of argument, I suppose. He has testified that the same base price was established at each mill by Cowell.

By Mr. Wooden:

Q. Isn't that right, Mr. Shelby?

A. Destination prices based on that. You could—

Q. Well, now, referring to Commission's Exhibit 1267, for identification, to aid you if you need aid as to the prices that were put in effect for the several months following the change in 1929—

A. I presume this is correct, Mr. Wooden. I see no reason to doubt it.

Q. Well, will you state what the prices were that followed the inauguration of it?

Mr. Leisure: Now, if the witness knows, I have no objection to his testifying.

8691 Examiner Norwood: You can state what these prices were if you know them either before or after refreshing your memory from the paper.

The Witness: Only from the paper, Your Honor.

Examiner Norwood: Well, if you recall after looking at the paper that those were the prices,—if you have any recollection, then you may state it. If not, why, say so.

The Witness: I couldn't say. That is 7 years ago. I couldn't tell you what those prices were except from this letter.

Examiner Norwood: All right.

By Mr. Wooden:

Q. Well, as I understand it, there was some reduction in price that took place, a fairly substantial reduction following the inauguration of this base price at each mill by Cowell?

A. The price at destination — many destinations change. There was a reduction in practically every destination except that reached by the Santa Cruz Company by reason of their low freight rate.

Q. And were the old prices restored some time after that?

A. I don't think you and I are talking about the same thing, Mr. Wooden. When the price sheets of Cowell came out, prior to that all prices were based on Dav-
8692 enport destination. Prices were shown as being Davenport, plus the freight rate.

Q. All right.

A. The Cowell price sheet came out and changed those destination prices throughout Northern and Central California. It made many, many reductions in the prices at destinations throughout California.

Q. Didn't it also make a reduction in the base price?

A. Not at that time. As I remember it, the price was the same, simply distributing it over the various mills. Of that I am not sure, but that is my understanding from recollection.

Q. Does your company ordinarily make the same delivered price at given destinations that other mills in this vicinity make?

A. Ordinarily; yes, sir.

Q. Do you receive the price lists of the Santa Cruz Portland Cement Company?

A. Occasionally; yes, sir.

Q. Do you publish a price list of your own?

A. We have on two or three occasions; yes, sir.

Q. But not regularly?

A. Not regularly; no, sir.

Q. What were the reasons for publishing it only at times instead of regularly?

A. We didn't publish a price list for years, and
8693 as we grew our trade wondered why we didn't have a price sheet for them. That was the occasion for our first price sheet. Any supplement to that or any changes we found, we simply made by supplement to that, which was kept in our own office, not distributed. Later on, when the code authority—when the code came in, why, we had a good many supplements to some of our price sheets, so we re-issued the price sheet including certain features that were then required by the code. That condition prevailed up to very recently,—I think in January, 1936, why, we published our present price—1937 we published our present price.

Q. Do you send any of your price lists that you had published to other mills?

A. Some few. When we distribute it to the trade we put their price sheets in the same mail that we use in sending out our publications to the trade.

Q. What other mills have you sent your price lists to?

A. I think it is confined to the Northern California mills, the four competitors we have up here. Occasionally when somebody would ask for a price sheet we would have no objection to sending it to them.

Q. Do all the other Northern California mills publish lists; do you know?

A. I don't think so.

Q. Which ones?

8694 A. Cowell and Santa Cruz are about the only ones that I remember.

Q. How do you make up the price lists that you have put out?

A. We make it up by taking a mill base or a mill price and adding our freight rates in the zones that we can reach with low freight rates. In the zones outside of that we meet the prices that we have been able to collect and find as being in effect in those other areas.

Q. When you speak of meeting the prices of others, you mean making your delivery prices the same as the others?

A. The same as theirs.

The witness identified Com. Ex. 1268 as a price list of

the Calaveras Portland Cement Company, containing a circular bearing the same date as the list itself.

Q. Have there been any changes in your prices since that time?

8695 A. Some few; yes, sir. I think the ones that I gave you this morning have the supplements that are effective up to date. That was taken from us by Mr. Casto. He didn't want the supplements. He just wanted that.

Q. As I understand it, the prices in your list here at some destinations are the combination of your base price plus freight?

A. That is right.

Q. And at other destinations here, the combination of the base price of the other mills plus freight?

A. Well, we can work back to find out a price for them.

Q. The equivalent of that, anyway; is that right?

A. That is right.

Mr. Wooden: I will offer this Exhibit 1268, for identification.

8696 Mr. Leisure: May I ask the witness a question about this, Mr. Examiner?

Examiner Norwood: Certainly.

Mr. Leisure: I notice there is an attached sheet that has been clipped to the book and the sheet which is attached is dated January 10, 1936. Does that date bear any relation to the date of the issuance of the book? You see, here (indicating)?

The Witness: That was enclosed with each one of these as it was sent to a dealer.

Mr. Leisure: When the book was sent?

The Witness: When the book was sent.

Mr. Leisure: It has to do with the transmittal rather than the publication?

The Witness: Well, the prices are delivered prices to consumers. From that the dealer gets a commission of 20 cents a barrel.

We also outline the character of work we will sell direct at dealer prices. That's the object of that circular; that attachment.

Mr. Zimmerman: I shouldn't think we would be interested in that exhibit at all.

8697 (COM. EX. 1268 was offered and received in evidence.)

Q. Mr. Shelby, did you oppose this ruling of the State Board of Equalization that is printed in your price list, 1268?

A. I don't know as we opposed it. We just simply got an interpretation of it to avoid any controversy with our customers. That, I am not positive about.

Q. Did you seek to have them make a different ruling?

A. No, we just wanted to have it clarified, as I remember it.

Q. You say you made no effort to have them hold that the price on which the sales tax should be based should be exclusive of freight?

A. I said we didn't oppose it, but we went to them for a ruling.

There was some controversy between the dealers and ourselves, apparently, and our treasurer took that up with the Board of Equalization to get a ruling.

Then, in order to avoid any further controversy, we simply attached that ruling to this price sheet as we sent it out.

8698 Q. Didn't you seek a ruling to the effect that the price on which the sales tax should be assessed should be exclusive of freight?

A. A ruling from the Board of Equalization?

Q. Yes.

A. I might have. I don't know.

Q. Well, now, when you say you might have, you mean you did?

A. I don't know as it ever came up to me. That is purely an accounting matter. The man that has to collect the bills is the one that—

8699 Q. Do you recall any contact with Mr. Mugford, the Chief of the Tax Division of the State Board of Equalization?

A. No, sir.

Q. Mr. Shelby, do you recall some difficulty or criticism to your filing of certain trucking conditions along in May or June, 1935?

A. I think that complaint was lodged with the Code Authority.

Q. Yes.

A. And they in turn transmitted it to us. Just who made the complaint, though, I don't know.

Q. What was the nature of the complaint to your truck filing?

8700 A. Our truck filing, we filed a price sheet, as I remember it, with the Code Authority in which we stated that we would ship by rail to the various destinations and allow the dealers the cost of hauling the cement from the railroad cars to their warehouses. That was to meet a condition that was created by some companies trucking directly from their mill to the dealers' warehouses. The complaint was of the indefiniteness of it. We didn't say how much we would absorb. We just left it open because we didn't know, ourselves, what it would be.

By Mr. Wooden:

Q. Did you later make a filing or correction of your previous filing?

A. I don't think we corrected it until later. We found that the dealers, we thought, were making us absorb too much for that trucking, and we made a limitation of 10 cents per barrel on it.

Q. Wasn't the objection based in part upon the claims that your truck filing had the effect of making destination prices uncertain?

A. Yes.

Q. And your later 10 cents allowance for that 8701 made it more certain, didn't it?

A. Made it more certain.

Q. Were you of the opinion that your original filing was in accordance with the terms of the Code?

A. Well, it was the only protective measure we knew how to use; whether it was a violation or not, we were going to find out.

Q. It was at destination price which you were quoting, anyway?

A. It was an absorption at destination to equalize, we thought, the competition that was existing.

(Whereupon a certain document was marked "Commission's Exhibit No. 1269," for identification.)

Q. What is the paper I show you marked Commission's Exhibit 1269, for identification?

A. That is a letter notifying our trade we were withdrawing that absorption.

Q. That is the action that you took, as you previously described?

A. Yes.

Mr. Wooden: I now offer it in evidence.

Examiner Norwood: Five minute recess.

(Whereupon a short recess was had.)

8702 Examiner Norwood: Go ahead.

By Mr. Wooden:

Q. Mr. Shelby, will you describe in general terms the area in which the Kentucky House mill base price combined with the freight makes the lowest delivery price?

A. It is a very limited area, not over 50 miles.

Q. Fifty miles in all directions?

A. In all directions.

Q. Does that include the City of Stockton?

A. It includes the City of Stockton.

Q. Is that your principal market in which you get the full mill base?

A. Stockton and Sacramento. We have equal rates with the other people at those two points. Our rates are lower within that circle; that is, the boundary of the circle.

Q. And in both of those places you realize your full mill net, full mill base as a net?

A. We try to, yes.

Q. Well, that is the area in which your mill base plus the freight makes the delivery price; isn't that right?

A. Yes, sir.

Q. Other mills sell, of course, in those two places?

A. Yes, sir. I think you misunderstood me. I said that that is where the circle met the other mills our rates are equal in those two towns that you mentioned, so

8703 they would get the same net as I in those two towns. Anything within that circle, then, they would have to absorb while I would get my full net.

Q. Neither of those two, Sacramento or Stockton, is then within—

A. Exclusively within our circle, no.

Q. You have some points in an area circle of 50 miles where that is the case?

A. Small towns, Angels, for instance, or the town of Jackson.

Q. Do you have other mills coming into those towns selling?

A. To some extent, to some limited extent.

Q. Do you sell and deliver into the mills towns or other mills?

A. We do at Red Wood City.

Q. How about Merced?

A. I don't think we have shipped anything to Merced in years—not because we don't want to.

Q. Does your mill base plus freight make the delivered price in Nevada?

A. No, sir.

Q. What does?

A. I imagine the Cowell people have the lowest rate in Nevada.

Q. Although they are farther West than you are?

A. Yes, but we have to come down to Stockton
8704 and go to Sacramento to get started to Reno. There is no direct route from there.

Q. You quote, I notice in your price list, Commission's Exhibit 1268, at each of the points where other mills are located?

A. Yes.

Q. You have some customers at each of those points?

A. No, sir; haven't recently.

Q. As I understand it, now, when other mills come into the area adjacent to your mill, where your base price plus freight makes the lowest delivery price, they meet your delivered price in that area?

A. They either meet it or beat it.

Q. But, ordinarily, I believe you said that the destination prices are the same?

A. Practically the same.

Q. When you go into the area where other base mills, the prices of other base mills plus freight make the lowest delivery price combination, you make your price the same as theirs there?

A. Yes, sir.

Q. Well, in each area governed by a particular base mill price, that base price is not disturbed when other mills come into that area?

A. The destination price is what we are more in-
8705 terested in than the base price.

Q. Yes, but—

A. We try always to get as much for our cement as we can, and when we find that a price is so much in Sacramento, or Chico, or some other place, why, that is what we try to get for ours.

Q. And in an area where you have an advantage you don't take any less?

A. No, sir.

Q. The base price of some mill is effective in every particular area?

A. I think that is true.

Q. Pardon me?

A. I think that is true; largely true.

Q. Have you quoted the Government at any time on a straight f.o.b. mill basis without regard to destination cost, or where the destination was?

A. We have recently, yes.

Q. How recently?

A. Well, I imagine in the last 30 days, or 60 days.

Q. Do you suffer any disadvantage from so quoting?

A. I imagine that if we quoted f.o.b. our mill to the Government we would get very little of their business.

Q. Well, you have to figure on what your mill net is, in any event, do you not?

8706 A. Yes, but we would have to know what the destination was to even figure our computation, to arrive at that mill net.

Q. You didn't do it in the last case, did you?

A. No, we didn't. We just made it an arbitrary figure just as we did Boulder Dam and others.

Q. Did you bid your mill base price?

A. We did not.

Q. Did you bid below it?

A. Yes.

Q. Did you figure you had to bid below it in order to have a chance for the business?

A. Yes.

Q. Wasn't the price that you did bid satisfactory to you at the time you bid it?

A. I don't know as it was satisfactory. It was all we figured we could get, in view of the competition we had seen.

Q. At any rate, it was not as satisfactory as your mill base?

A. Not as satisfactory as our mill base, no.

Q. How much below it was it?

A. I couldn't tell you, really, offhand. I have forgotten what the bid was.

Q. Can't you say whether it was 10 cents or 25 cents below?

A. No, it was more than that. It was quite an appreciable deduction.

8707 Q. Was it as low as $1.45?

A. I will take that back. It was just 10 cents. Twenty cents on the bid we made blind. The one we made the other day of less than our mill base was in a competitive area where we knew the points of delivery. The Government told us that.

Q. Do you consider that quoting f.o.b. mill requires you to make the price lower than your mill base?

A. No, but that was on a very large quantity of cement, 250,000 barrels was involved in that bid.

Q. Did you believe that quoting f.o.b. mill would tend to reduce your mill base price?

A. There is no question about that. It has on all the Government work we have bid on.

Q. Did your dealers ever misinform you as to the price that they can get,—delivered from your competitors?

A. Well, that is hard to say, Mr. Wooden.

Examiner Norwood: Do you sometimes do so?

The Witness: Well, I don't know. They tell us about these low prices that they can get. Whether they are telling us the truth always—now, that is a big order.

If we want the business, and we think they are telling the truth—

By Mr. Wooden:

8708 Q. You don't accept their unsupported statements on such points, do you?

A. No. We try to check them up as best we can.

It depends a good deal on the dealer. If we have been doing business with him a long time we think more of his word than some fellow who comes in and buys from a competitor.

Q. Do you ask the competitor's mill whether there is anything to the creditor's claim?

A. I can't recall any instance of that kind.

Q. Do you recall of having a competitor mill making a similar statement?

A. I imagine we have discussed that thing at times but any specific case I don't know.

Q. Do your salesmen have any discretion to depart from the printed price list that you put out?

A. None whatever.

Q. You seldom have to change your printed price list?

A. Once in a while we find a condition that requires a change in the price.

Q. Some change in freight rates, or something of that sort?

A. Something like that.

Q. Who, in your organization, Mr. Shelby, determines what the base price of your mill should be?

A. Generally, the president and myself discuss that.

Q. Discuss it and decide it?

8709 A. Decide it.

Q. What was the situation, as you recall it, Mr. Shelby, in regard to your first bidding on the Bonneville Dam project in 1934, whereby you, I believe, were low bidder on the first bidding?

A. Yes, sir; we were the low bidder.

That was a question by the use of the land-grant deduction. The land grant figured on that—to be figured on that job—was from Roseville, California, to Portland, Oregon. The Government contended that the deduction should be made near the Klamath Falls route. They have two routes into Portland; Southern Pacific claimed it should be the other way. We had some controversy with the Government about proper payment, or, rather, the deduction of bills that they presented.

Instead of taking what the Southern Pacific thought they should have, they took the one the Government contended they should have, which meant that the land-grant deduction was greater from our mill than those from the other mills who figured the actual route.

8710 Q. Were you about 15 cents a barrel low, as a result of that?

A. Yes.

Q. And then were the bids rejected?

A. They were rejected.

Q. And on the second invitation did you put in the same bids as the others?

A. I had to, after that. The Code Authority gave us the land grant rates to be figured and the prices filed with the Code Authorities left us no alternative.

Cross-Examination by Mr. Leisure.

Q. As to the Code Authority, Mr. Shelby, you could have quoted any price, of course, that you wanted to at the time?

A. After the Code Authority?

Q. A price you filed?
A. Prior to the Code Authority?
Q. No, at the time you are speaking of, during the Code Authority.
A. Provided we filed it.
Q. Yes.
A. We would have to use the file price unless we
8711 filed one different from that already on file.
Q. That is, you could have quoted any price that you had on file?
A. Yes, sir.
Q. It follows, doesn't it, that if you wanted to get a lower price, you would have filed a lower price?
A. Filed a lower price.
Q. Now, with reference to this Cowell Company, what it did when it sent out this notice in August was to establish a new base price based on its mill and based on other mills, a new destination price?
A. That is right.
Q. Not a base price, a new destination price?
A. A destination price.
Q. And did that action of the Cowell Company, in naming a price at your mill—did that help or injure your company?
A. That injured us considerably.
Q. Would you say that it cost you as much as 50 cents a barrel at Stockton?
A. I think those were about the figures, 50 cents a barrel at Stockton.
Q. Is Stockton your nearest good market, important market?
8712 A. Nearest good market.
Q. Would that figure over your different sales amount to some thousands of dollars, would you say?
A. Yes, sir.
Examiner Norwood: Tell us just how it costs you that.
The Witness: Pardon me?
Examiner Norwood: Tell us just how it worked out to cost you that?
The Witness: The freight rate from Santa Cruz, Davenport plant, to Stockton, is much greater than the one from Kentucky House to Stockton, and when they were basing on Davenport alone, they would add the high freight rate from Davenport to make the price at Stockton. We having a lower freight rate would have that advantage.

8713 When that basing was changed, where the nearest mill made the price, why, that made our mill the natural basing price of Stockton, or one of them.

By Mr. Leisure:

Q. Now, Mr. Wooden asked you if in selling at these destination prices you also attempted to make your price the same as your competitors.

A. Yes, sir.

Q. Do you recall that? Does that mean anything more than that you tried to sell at the market price?

A. That is all. It being a standard product, we couldn't get any more for it, and we didn't want to take any less, if we could help it.

Q. Then by the price at which you sell, and your competitors sell at a given destination, is that or is that not the market price at that place?

A. That is the market price.

Q. And when you say you try to meet their price, does that mean you try to cooperate with them or that you try to compete with them?

A. Try to compete with them.

Q. That is, do you mean that you try to sell as cheaply as they sell?

A. As cheaply as they.

Q. Could you sell your cement at any given des-
8714 tination for more than they were selling theirs at the same place?

A. No, sir. No, sir.

Q. You are interested in trying to sell your cement at as an attractive market as you can find; are you not?

A. Yes, sir.

Q. And prices at given destinations, are they known, well known to customers who purchase cement?

A. Oh, yes, sir. Our own men are always calling on them; not only our own dealers but every dealer in a town keeping himself and us posted.

Q. Will you look at that exhibit, 1269, and tell us what it was?

A. Well, this is the withdrawal of the offer to absorb the cartage, any part of the cartage of the railroad cars to the point of ultimate use; that is, either—

Q. You have not described that withdrawal in your testimony, have you?

A. I think so. As I understood Mr. Wooden, first, my

circular said we would absorb it to any extent, and then later on we limited it to 10 cents per barrel.

Q. That is right.

A. And this is the withdrawal of both of those offers.

Q. That is the third step, in other words?

A. The third step, yes.

A. The third, step, yes.

8716 (COM. EX. 1269 was offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Shelby, on the question of mailing these price lists, as I understand it, you mail them to every one that is on your mailing list, whoever they may be?

A. That is right.

Q. Creditors, customers?

A. That is right.

Q. With whomever you circulate?

8717 A. That is dealers principally, some large users of cement.

Q. But your complete mailing list?

A. Complete mailing list.

Q. Mr. Wooden asked you with respect to the Government business, whether or not you had to bid lower than your base to get the business. Would you mind just explaining what you mean by that?

A. Yes, sir. I meant this, that we knew and know that there is very little Government cement to be used in the area that we serve, and without destinations being known it is impossible for us to get any of that business if we bid our present base price. So, therefore, we have got to either find out in some way where this cement is going and figure our competition, or just take a wild chance in bidding.

Q. And that is what you meant?

A. That is what I mean.

Q. By your statement?

A. By the fact that we couldn't sell the Government except we knew that we had to reduce our base price. It was a known fact that there was no cement to be used in the area that we had the lowest freight rate in. Furthermore, the land-grant rates are all against us. We have nothing up in that territory, you see, that has any part of a land grant in it. We are handicapped by maybe fifty to one hun-

dred miles of railroad haul before we get on the main
8718 line of the Southern Pacific, where these land-grant rates exist. We are always at that handicap in Government business.

Redirect Examination by Mr. Wooden.

Q. Mr. Shelby, you say you try to sell as cheaply as your competitors, and you make the same delivered price in order to do that?

A. Yes, sir.

Q. You do not care to sell more cheaply than your competitors?

A. No, sir; that would only be a temporary gain.

Q. Even where you have an advantage over them you don't care to sell more cheaply than they?

A. No, it would simply be a temporary gain if they wanted the business in that area.

Q. And in areas where they have an advantage over you, they do not sell more cheaply than you delivered in that area?

A. Well, I don't know what they would do, presumably not.

Q. Well, you go in there and beat their delivered prices, as I understand it, in the areas where they have the advantage over you?

A. That is right, if we know what they are.

Q. Now, Cowell, on this occasion where he put in these base prices on different mills, he took less than the
8719 delivered price figured on the base price, did he not, at various destinations?

A. Yes.

Q. Would you call that absorbing freight or price cutting?

A. Well, I don't know. That is a change in marketing conditions. I would put it that way.

Q. A change that resulted in lowering the price?

A. That is true.

Q. And there was an effect during that period of different prices to different mills, was there not?

A. You mean after he put in the price, or before?

Q. Well, after he put it in, yes.

A. Different prices from different mills?

Q. Different delivered prices between different mills.

A. I don't think so, not from his price sheet.

Q. Well, this 50-cent loss that you referred to, as I understand it, that was a loss consisting of the freight advantage that you had in certain areas based on Davenport?

A. That is right. In substance, it just changed the base from his mill to mine that had the lower freight rate in there.

Q. Based on Davenport, that 50 cents was added to your mill net realization?

A. That is right.

Q. My understanding was that the Cowell prices, 8720 whatever they may have been at destination were based on $2.45 at the various mills; is that right?

A. That is right.

Q. Does that mean that although the $2.45 was the nominal base, that they didn't add the full freight to that $2.45 at some destinations?

A. No, they did that. They added the freight rate to all of those prices that they put in various mills serving their district to arrive at their delivered prices in their own seat. I presume we figured it back that way, anyhow.

Q. Did you lose much of the 50 cents a barrel on that $2.45 price at your mill?

A. On that particular town, yes. I think that is what —I don't—it wasn't a loss except in the reduction of net from $3 to $2.45, or something of that kind.

Q. You mean that your cost in that particular was $2.95?

A. No.

Q. You mean you simply didn't obtain as much as you had before?

A. That is it. It was a loss.

Q. In the way of profit?

A. That is right, a loss of profit.

8721 *Recross Examination by Mr. Leisure.*

Q. Mr. Shelby, I show you Respondent's Exhibit 32 for identification and ask you if you received that telegram and also whether you sent telegram, Respondent's Exhibit 33, for identification?

A. Yes, sir; I sent one and received the other.

8723 San Francisco, Cal.,
July 7, 1938

8725 T. K. HOLMES, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

I am vice-president and assistant general manager of the Calaveras Cement Company and have been connected with that company since August 1936. Prior to that time I was vice-president in charge of sales and traffic of the Yosemite Portland Cement Corporation, having been connected with that company in that particular capacity since the early part of 1934. I had been connected with the same company prior to that time as sales manager
8726 since the last of June 1929. I was not with the Yosemite company from the time it began operations. I think they made their first shipment in the latter part of 1927.

Q. When you were sales manager there, during part of 1929, did the company make its delivered prices by using the Davenport base?

A. Yes, sir.

Q. Can you say what that Davenport base price was then?

A. Well, I would like to make a little correction. When you say "Did we make our prices by the Davenport base price?" the destination prices were based on the Davenport base.

Q. That is what I meant. Can you say what the Davenport base price was then?

A. $2.45 I believe it was, in cloth.

Q. What was it—

Mr. Leisure: Is that 1929, Mr. Wooden?

Mr. Wooden: Yes.

By Mr. Wooden:

Q. What was it on a strip basis?

A. I believe on that we deduct the cloth sacks, and—

Q. How much?

A. Forty cents per barrel.

8727 Q. Yes.
A. And the cash discount.
Q. How much was that?
A. Ten cents per barrel, as I recall it.
Q. Making stripped $1.95, was it?
A. I believe so.
Q. Did you add the freight from Davenport to your sales to all points during that period?
A. Our invoices were based on a destination price.
Q. Which included the freight from Davenport?
A. Yes, sir.
Q. How much, approximately, a barrel was the freight from Davenport to Merced?
A. Well, I believe it was 60 cents a barrel.
Q. What was the territory in which your mill made sales,—Yosemite Mills?
A. We made sales wherever we could in Northern and Central California.
Q. Did you make some sales in Nevada?
A. You are speaking of 1929?
Q. Yes.
A. I believe we made a few in Reno.
Q. Did you have some sales in Oregon?
A. Some in Klamath Falls, but very few.
Q. Were the Nevada destination prices based on Davenport?
8728 A. I believe they were, although I don't recall.
Q. How about Oregon?
A. I think the same thing was true there. I don't recall exactly, though.
Q. During that period when you were basing on Davenport, what was the approximate range in the mill net prices of Yosemite mill?
A. I don't know whether I just understand your question, Mr. Wooden.
A. You mean the mill net that we got, regardless of the destination?

By Mr. Wooden:

Q. Yes; between different destinations.
A. I couldn't answer that; I don't recall.
Q. Well, you used $2.45 as your base?
A. That is right.
Q. And you added approximately 60 cents to Merced?

A. That is right.

Q. Making $3.05. Then, of course, you take out the sacks and cash discount in each case. But you realized different mill net from different localities, didn't you; customers; different localities?

A. That is right.

8729 Q. I take it that $3.05 less sacks and discount was your approximate maximum mill net?

A. At that particular point; yes, sir.

Q. Well, wasn't it your maximum mill net at all points?

A. That would be, I believe, the highest mill net which we would get.

Q. Yes. What I am trying to get at, is what the low range of your mill net under those conditions was.

A. The reason I can't answer that, Mr. Wooden, is because if we made a sale down at Santa Cruz we would sell it somewhere near the $2.45 price, and I don't recall what our freight was at those points.

Q. You did make sales to Santa Cruz?

A. At the town of Santa Cruz.

Q. And you did make sales at the mill locations of other mills than the Santa Cruz Company?

A. I presume we made sales at Redwood City; we attempted to; whether we did or not, I don't know.

Q. Do you have customers there?

A. I think we perhaps did.

Q. Do you have any customers at Cowell?

A. No, sir.

Q. Or at Kentucky House?

A. No.

8730 Q. Did the other mills, such as Santa Cruz and Howell and Pacific and Calaveras make sales right down in Merced?

A. Occasionally, yes. Merced is a larger community and it supported a greater number of dealers.

Q. Did there come a time in 1929 where you no longer based on Davenport?

A. Yes, sir.

Q. Will you describe the circumstances and what the change consisted of?

A. I believe it was in August, the latter part of August, a competitor put out a price list changing it from the single mill basing scheme to the multiple mill basing scheme.

Q. Where was that?
A. Mt. Diablo.
Q. What was the name of the company?
A. Henry Cowell Lime & Cement Company.
Q. Mt. Diablo—was that the plant name?
A. Yes.
Q. Did that include the inauguration of a base price at your mill?
A. The destination prices published in that list was apparently based on the same base price as all of the northern mills.
Q. Do you mean that the Davenport base price was put in effect at the other mills?
A. That is apparently what it was, yes.
8731 Q. Same price but on a different basis. Did that result in some lowering of prices?
A. In the case of Yosemite Cement Company, considerably lower.
Q. Was that the result of your no longer being able to add the freight from Davenport to some of your locations in nearby territory, nearby to your mill?
A. We couldn't get any more for our cement than our competitors sold it at.
Q. You had been getting as much as 60 cents a barrel addition over and above the Davenport base at Merced; is that right?
A. I think those figures are substantially correct.
Q. And did this new multiple base system cut you down in the amount that you could receive in that way?
A. Yes, sir.
Q. Can you say how much it cut you down, approximately?
A. I happen to recall that we made a survey of the previous year's business and applied the new destination prices to the same quantities as we had shipped before and it resulted in an average reduction of some 28 cents.
Q. Per barrel?
A. Per barrel.
Q. You were going lower than that on some of your mill net, were you not, even prior to that time? Lower than the 28 cents reduction would have been equal to?
8732 Mr. Leisure: I don't understand the question, myself. I would like to understand it, if I can.
Examiner Norwood: Read it.
(Last question read.)

A. I don't believe that we were. I don't recall. We attempted to get as much for our cement as we could.

By Mr. Wooden:

Q. You don't mean to say that the 28-cent reduction pulled you down to the lowest mill net that you had ever obtained, during that period?

A. Well, Mr. Wooden, I assume if we made shipment to the territory in the neighborhood of the Santa Cruz mill that possibly nets on those shipments were less than that 28-cent reduction. I don't recall that. I wouldn't know without looking up the figures.

Q. Do you have any recollection of what the range of your mill nets was during that time?

A. After the change?

Q. Before and after.

A. In bases? Pardon me?

Q. Before and after; before, particularly.

A. No, I don't.

Q. What was the mill base price, including in that the Yosemite mill, in 1929,—August, 1929?

A. I think the destination prices contained in the 8733 list worked back to the $2.45 base.

Q. What approximate area did the $2.45 base at the Yosemite mill control?

A. You mean how far did our freight rates carry us before we met other rates?

Q. Yes.

A. I believe under the then existing rates, to a point on the north somewhere south of Stockton, and on the south to a point nearer Tulare.

Q. Tulare. And how about east and west?

A. Well, of course, the mountains were on the east, so you couldn't go very far in that direction.

Q. You got into Nevada but not on your own base, is that it?

A. That is right; I don't think we did.

Q. Was it the aim of the Yosemite mill to make its delivered prices the same as the delivered prices of other mills?

A. It was our aim to get just as much money for our cement as we could.

Q. In doing so, was it the aim to make your delivered prices the same as those of other mills?

Mr. Leisure: I think he has already answered the question.

Examiner Norwood: I don't think so.

Mr. Leisure: Unless counsel may want to draw some other inference from that—

8734 Examiner Norwood: I don't think that was a direct answer.

Mr. Leisure: —phraseology, which he has persisted in with each witness, which means absolutely nothing. It is a sort of a jargon. "Do you aim to make the same" after the witness has already testified that he attempted to meet competitive prices and could not sell his cement for any more than the other manufacturers sell in that territory. I don't think we should indulge in that kind of game with the witness.

Examiner Norwood: I think the witness has not given a direct answer to the original question.

Mr. Wooden: He didn't do that.

Examiner Norwood: He is simply asking him what his policy is with regard to that.

The Witness: Will you give me the original question again?

Examiner Norwood: Read the original question.

(Question read as follows:

"Q. Was it the aim of the Yosemite mill to make its delivered prices the same as the delivered prices of other mills?")

The Witness: Now, may I amplify that statement, then?

Examiner Norwood: All right.

8735 By Mr. Wooden:

Q. Yes.

A. We cared nothing about the others' prices, but we wanted to make the most money we could.

Q. Well, did you, in general, have your delivered prices on an equality with the delivered prices of other mills?

A. At the time that I went with the Yosemite Company, we had a small volume of business. We had only been in existence about a year and a half, and we were groping our way trying to get all the business we could and make all the profit that we could; and we conformed to the prices that had been published if we could get them, because we were anxious to make every cent of profit that we could.

8736 Q. You mean the published prices of the Santa Cruz Company?

A. I don't know about the Santa Cruz Company.

Q. You say you conformed with the prices that had been published?

A. Probably several cement companies might have published prices; I don't recall that.

Q. Did you receive at the Yosemite Company the price lists of the Santa Cruz Company?

A. From the Santa Cruz Company?

Q. Yes.

A. Not that I recall of. I do recall going out and getting prices, price lists of other cement companies from dealers.

Q. Mr. Gay testified yesterday that he sent his price lists to other mills. You don't remember?

A. He might have done so, but I don't recall getting them myself.

Q. Including yourself?

A. No.

Q. Well, you say, as I understand it, that you endeavored to conform to the prices that were published when you entered the field?

A. No, I didn't say that, sir. I said that I tried to sell at the prices published because by doing so it would give us as much money as we could possibly make any other way.

8737 Q. In other words, it was your policy, then, to endeavor to get the delivered prices which were published by other mills?

A. It was our policy to make as much money—

Mr. Leisure: I think this is arguing with the witness. We have been over that, and the witness has told us what he tried to do. I object to any further questioning along that line.

Examiner Norwood: Is the question pending now?

The Reporter: Yes, sir.

Examiner Norwood: The objection is overruled.

By Mr. Wooden:

Q. Did your Yosemite Company publish price lists?

A. For the use of our representatives at that time. I don't remember whether we put them out in general to the trade or not.

Q. Was there some time when you, during your con-

nection with the Yosemite mill, that you did put them out to the trade as well as to your salesmen?

A. Yes, sir.

Q. You can't say when that was?

A. No, I can't. In general, we had the policy of issuing no more price lists than we had to because of the expense of issuing them.

Q. Did you put them out in mimeographed form or printed form?

8738 A. Sometimes printed, although later years, in my connection with them, we put them out in mimeographed form.

Q. What was the policy of the Yosemite mill with reference to whether you would make delivery to customers' trucks at the mill?

A. During the time that I was with the Yosemite, during the first years of my term there, there was very little trucking done, and during the latter part of the time that I was with them, we had a connection with a large trucking firm that did virtually all of our trucking.

Q. Did you permit customers' trucks to come to the mill to take delivery in trucks?

A. I don't believe any of our customers owned their own trucks.

Q. Did they send trucks?

A. Sir?

Q. Did you permit customers to send trucks to the mill to take delivery at your mill price?

A. If some customer had a truck man that he favored, and if this truck man had the necessary insurance papers to protect us, we sometimes employed him the same as we would employ our regular trucker.

Q. Did you make delivery at the mill price or at the delivered price depending on where the shipment was to go?

A. No, sir; I think it was the destination price.

8739 Q. Destination price calculated on a rail basis?

A. Oh, yes, and the rail rate paid for the service.

Q. Do you recall a time in 1934 when your price at the mill was reduced from $2.20 to $1.80?

A. No, sir; I don't recall.

Q. Will you state what the prices were at the mill at the time you left there?

A. I believe $2.20 in paper.

Q. Can you state how long that price had been in effect approximately?

A. No, sir; I couldn't.

Q. You don't recall any occasion in which the price dropped 40 cents a barrel for a time and then was restored?

A. I don't remember the amount of the drop. I recall a Code filing considerably less than $2.20, but I don't recall the exact dates nor the exact amounts.

Q. Was it restored in a comparatively short time to the $2.20 figure?

A. As I recall it, it ran on for some little time.

Q. A matter of several months?

A. I wouldn't attempt to state the length of time.

Q. Did you put in the lower figure in your filing?

A. You mean did I include it?

Q. Yes.

A. No, sir; I did not.

8740 Q. Who did?

A. I don't know. We got—as we usually did, we got notice from the Code Authority, as I recall it, that a competitor has filed certain prices.

Q. Can you say what the circumstances or conditions were which existed at that time to result in that lowering of prices and then a restoration?

A. No, sir; I can't. You mean the cause of it?

8741 Q. Yes.

A. No, sir; I can't.

Q. Was there any condition resulting from truck operations that had anything to do with it?

A. Not that I know of.

By Mr. Wooden:

Q. Did the Yosemite mill have the same terms and conditions of sale, or payment, that the other mills had in effect?

A. I think so, generally.

Mr. Leisure: Will the record show what terms we are talking about? We would like to follow that testimony up and I am not clear from the general question what Counsel has reference to by "terms."

By Mr. Wooden:

Q. Well, what do you have in mind, Mr. Holmes, when I say "terms and conditions of sale"?

A. I suppose you mean cash discounts, do you not?
Q. That is one of the things, yes.
What else do you have in mind? Sack allowances?
A. They are a standard practice. I couldn't impose any more stringent terms than competitors impose.
Q. And you didn't want to make any more favorable terms?
8742 A. Naturally not.
Q. Did the Yosemite Company make it a policy of not shipping to a dealer at a point where he didn't operate a regular business?
A. In a town in which a dealer did not have a place of business?
Q. Yes.
A. I think yes, that I pursued that policy because I have done so would have upset some of our valuable dealer relations.
Q. Shipments to dealers outside of their home town would be usually made at a lower price than in the other town, would it not?
A. I don't understand you.
Q. I mean by that. a dealer shipping into another town than his own would not be given consideration unless his price were lower than the home-town dealer?
A. Well, I wouldn't know because we didn't practice that.
Q. Well, just based on your general experience; that is what I asking about.
A. I don't know what other companies might have done. That is why I wouldn't have anything to judge by.
Q. Well, didn't you at times, with Yosemite, decline to sell dealers who were coming into the market establishing themselves after you conferred with officials of dealer
8743 associations?
A. I didn't consult any dealers at all. I didn't have to. I refused to sell dealers at times but simply because by doing so, maybe the fellow's credit wasn't any good, or maybe I would have antagonized a dealer who was loyal to us and gave us a good volume of business. It wasn't necessary to consult anybody about it at all.
Q. I am showing you a paper marked for identification 1198-G. It was identified by Mr. Milwee as a copy of a paper from your files. Is that a copy of a letter written by you (handing document to the witness)?

A. I don't see my signature on there, but I wouldn't have hesitated to write such a letter.

Q. It has your initials on, hasn't it?

A. It has down here (indicating), yes. I would do the same thing again today.

Q. Is that a copy of a letter written by you?

A. I don't know. My signature isn't on there.

Q. Your file copy wouldn't carry a signature, would it?

A. It generally does.

Q. You knew Mr. Bishop, secretary of the Coast Counties Association?

A. I knew him as a dealer.

Q. Didn't you know him as secretary of the Association?

A. If I wrote that letter I evidently did because
8744 it is addressed to him as secretary.

Mr. Wooden: Your Honor, I will offer the letter on the basis of Mr. Milwee's identification.

Examiner Norwood: Did you ever dictate any letters similar to that?

The Witness: I don't recall, Your Honor, but I say I wouldn't hesitate to do it.

Examiner Norwood: Well, your remark helps with the question.

Mr. Wooden: In the same connection, while it is pending, I have a couple more; they are related to this. We might as well consider them all at once, I should think.

Examiner Norwood: Go ahead.

By Mr. Wooden:

Q. Showing you papers marked for identification 1198-E and F, for identification; they were also identified by Mr. Milwee as coming from your files. Will you say whether or not you received the one which is "E," I believe, and wrote the other?

A. That is my signature.

Q. That is your initials, on 1198-F?

A. Yes, sir; and this is my handwriting here (indicating).

Q. On 1198-E?

A. Yes.

Q. They relate to the same paper that you looked
8745 at a moment ago.

A. But again I state I would be willing to do the

same thing again because any way I can boost my product for better relations with an outlet, I am going to.

Q. Do you have any doubt now you wrote the other letter?

A. No, I presume I must have written it, although I still can't swear to it. My signature isn't on there.

Examiner Norwood: Any objection?

Mr. Leisure: May I ask the witness a question?

Examiner Norwood: Certainly.

Mr. Leisure: Mr. Holmes, on this Exhibit 1198-E, is that your handwriting on the exhibit?

The Witness: Yes, sir.

8748 By Mr. Wooden:

Q. Mr. Holmes, referring again to the 1929 period, when you were basing on Davenport, did you sometimes make sales at that time based on the Yosemite mill base?

A. During the period that the single mill basing—

Q. Yes. In other words, did you sometimes vary from that and make it a price based on your mill?

A. I don't recall, Mr. Wooden, because, after all, I was pretty green in the cement business. I came into it the first of July, '29, and this single basing changed along the latter part of August, so I am not clear just what did happen.

8749 Q. Can you state whether or not you sometimes shared that freight advantage up to 60 cents Merced with some customers in your nearby territory?

A. Not to my knowledge.

Q. Then, did you get the full price plus freight from Davenport in all your sales?

A. To the best of my knowledge, we did.

Q. I am showing you papers marked as 1198-A to D, for identification, purporting to be an original copy of an original letter to the president of the Yosemite Company. On the top of it your name appears in handwriting. Can you state whose handwriting it is?

A. It is not mine. Mr. Fisher, our general manager, died in '34, and this might have been something he done. Do you want me to read it to see if I read it?

Q. No, just the handwriting. Can you say whether it was Mr. Wishon's handwriting?

A. I couldn't swear.

Q. Or Mr. Fisher?

A. Mr. Fisher wrote somewhat a similar hand, but it has been a long time since I have seen his writing.

Mr. Wooden: Your Honor, I offer this document at this time, 1198-A to D, on the identification of Mr. Milwee, as from the files of the Yosemite Company. It is a photograph of an original letter bearing Mr. Mallory's
8750 signature, and I assume there will be no objection to it as far as the identification is concerned. I should have said it purports to bear Mr. Mallory's signature.

8755 Examiner Norwood: I shall have to take those and study them with care to determine whether they are relevant or material, and admissible. Otherwise, they might be received subject to further connection, but I should not like to do that until I study the papers, so A, B, C, and D I wish you would give to me.

Cross-Examination by Mr. Leisure.

Q. Mr. Holmes, does the highway work in California form a considerable part of your sales of cement?

A. Are you speaking of the present time, or—yes, although the volume has fallen off considerably during the last few months.

Q. And is asphalt one of the competitive products that you must compete with?

8756 A. Yes, sir.

Q. And is there considerable competition from asphalt building?

A. A large amount.

Q. What effect, if any, could you tell the Examiner, does that competition have upon the price of your cement?

A. Asphalting materials being a lower-priced material, in order for Portland cement concrete to compete with it the price of cement naturally falls in meeting that competition.

8757 Q. How is asphalt obtained, is it a by-product?

A. Principally a by-product, I believe; a very small amount is produced from heavy asphalt producing wells in California.

Q. And the other is produced how?

A. As the residum from refining operations, I believe.

8758 Q. Mr. Holmes, when did Yosemite join the Institute?

A. I couldn't say.

Q. In what way does the company or how does the company use the Institute? What benefits does it derive?

A. The Yosemite Company?

Q. Yes.

A. Of course, you understand, Mr. Leisure, I haven't been connected with them since 1936. I don't know what their connections might be now-a-days.

Q. Do you know whether or not they were members while you were there?

A. A portion of the time, yes, sir.

Q. Now taking up both the companies, if you know, in what way did Calaveras or Yosemite Company make use of the Institute? I mean by that of what benefit was the Institute to them?

A. To my direct knowledge it was the vehicle used during the period of the organization of the Code; a central clearing house.

Q. That was the reasons for joining the Institute,
8759 both companies?

A. Yes, sir.

Q. I am trying now to bring it down to date. What services or what benefits Calaveras derives from its membership in the Institute?

A. None that I know of. I couldn't even swear that we still belong to the Institute.

Q. Did the Yosemite deliver by truck, Mr. Holmes?

A. Some times, yes, sir.

Q. And over what period was that?

A. We had some small amount of deliveries by truck, I believe in 1933, but it gradually grew in volume, at the time that I left there it was possibly 25 per cent or maybe somewhat larger, of the volume moved by truck.

8760 Q. And taking your experience with both companies, how does the cost of truck delivery compare with railway face?

A. On the face of it, it sometimes looks as though it is slightly less expensive than rail delivery, but that is not true. There are a lot of intangible costs; higher loading costs, inconveniences at the mill due to uncertain arrival of trucks and such things as that. That, in my estimation, run the cost of trucking up somewhat higher than rail.

Q. And what do you say as to the cost of trucking in the North country, north of San Francisco?

A. Just what portion do you mean? Do you mean on the Coast, or—

Q. In the mountains.

A. The reason I ask that question, it is very difficult on the coastal region and some portions of the inland regions because of mountainous conditions.

Q. That is what I had reference to, because of the mountainous conditions.

A. We object to delivery by truck in those regions.

Q. And how does it compare with the railroad?

A. It comes to a cent per hundred pounds higher than rail rates, in those sections.

Q. In the mountain district.

A. Yes. However, there is a customer, consumer-demand, to deliver by truck at your job sites, so we have
8761 to sometimes do that and absorb those costs.

Q. Mr. Holmes, from your experience, can you say whether cement is always sold in Northern California at the prices indicated on these price lists that we have been talking about?

A. I don't think it is always sold that way.

Q. How often would you say that the prices differed from the price list prices?

A. Well, I can only speak for the company or companies I have been connected with.

Q. Certainly.

A. When we felt that we needed business badly we might sell a little under our established destination price.

Q. And does that also apply to Government sales;
8762 on large orders, I mean?

A. Large orders to the Government; they always get the benefit of the lowest price that we can possibly make.

Q. That may or may not be under the list price which you have sold?

A. In general, large Government orders move on land-grant rates, and the derived destination price is lower than the published list price.

Q. Mr. Holmes, I notice on this Exhibit 1198-G you apparently wrote to a dealer. The name is so indistinct—"Coast Counties Lumber Dealers Association," on January 2, 1930 (handing document to the witness).

Either you wrote that letter or some one apparently in your office; have you any explanation to make of that letter?

A. Yes. As I stated, I can't swear that I wrote that letter but I wouldn't have hesitated to write a similar letter.

Q. What do you mean by that, you wouldn't have hesitated to write a similar letter? Will you explain it to the Examiner?

A. That is a little case of cheap diplomacy, if you
8763 want to call it that, Your Honor.

I was building up in the minds of some of the dealers in that territory we were not selling, small concerns such as the cooperative agency, whatever, in the hope I could build up a little appreciation in the mind of the people and get them to give me an order.

Examiner Norwood: On the part of the larger dealers?

The Witness: Yes.

A. (Continuing) These people seldom market cement as a retail outlet. They generally have some friend who is going to build a barn and wants a carload of cement and try to slide in under the wire and take advantage of it. They can't be of any value to a cement manufacturer. We must have an outlet through someone who will market our product 365 days of the year.

Q. And was that letter written in reply to a letter you received from the Farmers Cooperative Exchange, Inc., dated December 27th? I note your letter is dated January 2d.

A. I presume that it was.

Q. And from what you have just told the Examiner you were merely wanting to indicate to this dealer that you were not selling to these people?

A. That is right.

Q. As bearing upon that, did you, on the same
8764 date, January 2d, write to the Farmers Commercial Exchange, Inc., telling them you could not sell to them?

A. This apparently is my letter. I was also trying to keep them in a good frame of mind, not knowing what their connection might be with some good cement user or purchaser.

Q. So prior to the time of receiving a reply to your letter, you wrote to the Farmers Cooperative Exchange and told them you could not sell them?

A. Yes, sir.

Q. On the same date on which you wrote to the dealer?

Examiner Norwood: Had the Cooperative Association sent you an order?

Mr. Leisure: They inquired.

Examiner Norwood: I see.

Mr. Leisure: As shown by December 27th letter, they had made inquiry.

Examiner Norwood: Yes. Thank you.

Redirect Examination by Mr. Wooden.

Q. Mr. Holmes, I understand with regard to truck delivery, that it was your practice to make the delivered price by truck the same as the delivered price by rail; is that right?

A. We had to have some stable method of transportation.

8765 Examiner Norwood: Well, was that a fact, or wasn't it?

The Witness: That was.

By Mr. Wooden:

Q. By a "stable price," what do you mean?

A. I beg your pardon, I didn't say "stable price." I meant stable delivery scheme.

Q. It also had a bearing on stable price, didn't it?

A. Not necessarily.

Q. You figured your delivered price on rail basis?

A. Yes.

Q. And during the Davenport base you used the Davenport base plus rail?

A. There was very little truck delivery in those days.

Q. In figuring the delivered prices, however, you figured on a rail basis?

A. Yes, sir.

Q. And in the later period you figured on the rate of your base at your mill to destination?

A. At both points where there was a railroad.

Q. And in other territories you met the delivered prices of the other mills?

A. That is right.

Q. Just on the basis of comparing the truck rates with the rail rates, alone; the truck rates were ordinarily

8766 considerably less, weren't they?

A. I think not.

Q. What was your objection, if any, to making delivery to trucks at the mill without charging the rail base price, delivered price?

A. I wish you would amplify that a—

Q. As I understand it, you wouldn't deliver to trucks except but on the basis of the rail delivered price?

A. Well, in general, we didn't have any better rate from the truck men than we had from the railroad. If we had to pay them as much as we did the railroad—

Q. You didn't permit the customer to send his own trucks, take the cement away from the mill, at your mill base price?

A. I think I answered that question a while ago. We billed him at the destination price, and there was no saving in shipping by truck. Therefore, the truck man got the same amount of money that the railroad got.

Examiner Norwood: Well, under those circumstances, you didn't hesitate to deliver the cement at the mill, so that he could carry it off in his own trucks?

The Witness: I don't recall any dealers, or cement users, that own their own trucks. They sometimes asked us to hire some favored truckman, which we did, as an accommodation at times providing he had the proper insurance.

8767 Examiner Norwood: Well, it was not against your policy to do that, was it?

The Witness: Why, I don't know that it was. I don't know as that ever came to issue.

By Mr. Wooden:

Q. Well, there was no saving in cost delivered by having somebody come with a truck? You wouldn't charge them the rail delivered price?

A. That is right.

Q. Now, is it your testimony that you gave a 2 percent cash discount on the face of the invoice, and that the discount was figured on the freight as well as on the mill net of the cement?

A. That was my testimony, and that was my objection to a 2 percent cash discount.

Q. And it was figured including the freight?

A. Yes, sir.

8768 W. H. GEORGE, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

I am engaged in the building material business generally. I am engaged in the manufacture and sale of Portland cement with Henry Cowell Lime & Cement Company. My position with the firm is general manager and I have held that position ever since the company was incorporated, that goes back to '88, I think.

8769 Q. Where is the manufacturing plant of the firm?

A. At Cowell, Contra Costa County.

Q. What is the relation of the location of that plant with respect to San Francisco?

A. It is about 25 miles away.

Q. East?

A. East.

Q. Mr. George, I am showing you Commission's Exhibit 1211, and ask you to state whether or not you have seen that before and what you know about it?

A. I have seen it before.

Q. What is it?

A. It is a price list of the Santa Cruz Portland Cement Company.

Q. How come you to see it and under what circumstances?

A. It was sent to us through the United States mail.

Q. You received it in the mail?

A. Yes, sir.

Q. In an envelope bearing any mark indicating that it came from the Santa Cruz Company?

A. I don't know that.

Q. This price list that we have just been speaking about, Mr. George, carries delivered prices for a number of destinations in California and Nevada. Will you please state on the basis of your experience as one acquaint-

8770 ed with the prices at which sales are made by you and your competitors in California, whether or not those are the prices at which sales are generally made by you and your competitors?

Mr. Leisure: May we have the time?

Mr. MacIntyre: This is June 1, 1938.

A. Oh, I would say in general to the dealer trade, but outside of that, no.

By Mr. MacIntyre:

Q. That is, to the dealer trade?

A. Yes.

Q. Those are the prices made by you and your competitors?

A. I would say so generally. The bigger jobs are all being cut to pieces.

Q. Well, now, the price situation in 1929, Mr. George, there was testimony here yesterday by the Witness Gay and the Witness Shelby to the effect that you established, or your company established basing-point prices at a number of mills other than Davenport, which had theretofore been a basing point for pricing cement. Will you state whether or not at that time prices were the same as quoted by all of the manufacturers serving the Northern California district?

A. I would say no.

8771 Q. They were different?

A. Yes, sir.

Q. Will you please state whether or not the different prices that came to your knowledge as of that time prompted you, or your company, in whole or in part, to establish the prices that you did establish at these other points?

8773 A. Well, I was satisfied at that time that some of the mills were basing prices on special jobs at their 8774 mills other than Davenport, and I thought it was no more than fair to do it straight through. Furthermore, I felt that it would be a move that would be very satisfactory to the trade, and we just did it to beat what we felt was competition and also to make a good trade move from a selling standpoint.

By Mr. MacIntyre:

Q. Your reference to the trade there is to what class of trade, Mr. George?

A. When I say "trade" I mean the dealer trade.

8775 Q. Mr. George, does your firm sell cement for delivery by truck?

A. By truck and by train.

Q. On a basis of delivered prices?

A. Yes, sir.
Q. Both truck and rail?
A. Yes, sir.
Q. Do you sell to trucks on a basis of f.o.b. mill prices sometimes?
A. For local consumption, yes.
Q. Is delivery effected in that case by trucks owned by your firm?
A. We have no trucks.
Q. Do the dealers send trucks to your manufacturing plant?
A. Yes, sir.
Q. Or warehouses to get the cement?
A. Yes, sir.
Q. When that occurs, on what price basis do you sell them?
A. On the regular price at Cowell.
Q. What is that?
A. The regular price at Cowell.
Q. That is at your mill?
A. Yes, sir.
Q. And what is that price?
A. I believe it is $2.20 now.
8776 Examiner Norwood: And that is the net price and not a delivered price?
The Witness: Pardon?
Examiner Norwood: It is not a delivered price?
The Witness: Well, that is right, at the mill.
Examiner Norwood: Yes.
The Witness: In other words, $1.90 strip.
Examiner Norwood: Yes.

By Mr. MacIntyre:

Q. $2.20 in paper?
A. Yes.
Q. When you deliver cement to a dealer who sends his own trucks to your factory, and who buys at the $1.90 price strip, do you know what his delivered costs are when he carries it to his warehouse?
A. Oh, approximately the same as the delivered price would be by any other truck. The thing is, it is a matter of convenience for them. Dealers out in the country have small trucks. Sometimes they stand around the yard with nothing to do, and it is convenient to let them go over to

the mill and get a load of cement to fill in, but it costs them to operate those trucks.

8777 Q. Do you know whether or not their delivered cost would vary from rail cost?

A. Not a great deal; not a great deal.

Q. You are not sure whether it would be exactly the same, though, are you?

A. Oh, naturally not.

Q. It wouldn't be the same, did I understand you to say?

A. Naturally not, no; it would not be the same, naturally.

Q. Do you experience any disadvantages or difficulties through your delivery of cement to dealers' trucks at your manufacturing plant?

A. No disadvantage except it is bankrupting our little railroad.

Q. But does it have any disadvantage as to your manufacturing operations?

A. No. No.

Examiner Norwood: Is there any additional cost in connection with it?

The Witness: No, it is just as easy to deliver to a truck as into a railroad car.

By Mr. MacIntyre:

Q. Are your packing and shipping operations at times interfered with by deliveries of your cement to trucks at your mill?

A. No, sir.

8778 Q. Do dealers at times complain to you that they are delayed on the part of inefficiency or lack of facilities that you may have for loading their trucks on time?

A. Oh, once in a great, great while, but very unusual.

Q. In other words, are you able to load them without delay?

A. Yes, sir.

Q. Do you have any special facilities at your plant for loading trucks?

A. Just regular hand trucks.

Q. Are those the same that you use for rail?

A. Yes, sir.

Q. How long has your plant at Cowell been engaged in the manufacture of cement, Mr. George?

A. Made our first shipment March 10, 1909.

Q. And has been in continuous operation since that date?

A. Partial operation. Business has been pretty dull. About 50 percent at the present time.

Q. What is your capacity, in terms of barrels, at your Cowell plant?

A. Under present conditions today, about twenty-four to twenty-six hundred barrels a day.

Q. What is that in terms of annual capacity?

A. I beg your pardon?

Q. What is that in terms of barrels annually?

8779 A. Well, that would be 2,600 times 30 times 12.

Q. Well, that would include 365 days per year. Do you operate your plant that regularly?

A. No, no. As I say, about 50 per cent now.

Q. But when you do operate regularly, how many days per year do you average?

A. Well, we have always figured about 300 mill-days.

Q. About 300. So the multiplication would be the number of barrels per day for 300 days on an annual basis?

A. Yes, sir.

Cross-Examination by Mr. Leisure.

Q. Mr. George, on that price list that Mr. MacIntyre showed you a moment ago, and I think you said that that was the general price to dealers, did you or did you not want the Examiner to understand that your company and other companies adhere religiously to those prices?

A. They certainly do not.

Q. How general, Mr. George—what percentage of your shipments are moved by truck?

A. Oh, I would say today probably about 30 percent.

Q. For how long a period has that obtained?

A. Possibly for 2 years.

8780 Q. Are your deliveries to trucks largely for your nearby sales, Mr. George?

A. No, I would say that we truck considerable distances.

Q. You are now speaking of dealers' trucks?

A. No, no dealers' trucks; that is all nearby, but when there is large jobs then we hire truckers and truck considerable distances. We have trucked into Nevada.

Redirect Examination by Mr. MacIntyre.

Q. Mr. George, just one moment, please.

When you truck cement over into Nevada and other distant points from your mill, what has been your experience as to the disadvantages or advantages that came to you as a result of the trucking, if any?

A. Well, as far as we are concerned, it is a disadvantage all the time.

8782 Q. In other words, you get one price; they get other prices for standard Portland cement in the City of Oakland?

A. Yes, sir.

Q. Although it is approximately the same quality?

A. Yes, sir.

Q. You have no difficulty at times in getting a higher price, probably, than some of the others in Oakland for cement that is standard Portland Cement?

8783 A. I can't answer that because I don't know what the others are getting.

Recross Examination by Mr. Leisure.

Q. But the fact of the sales at different prices is not based on conclusions; it is based on your knowledge of the actual sales that are taking place, isn't it, Mr. George?

8784 A. Well, based on results that we see every day.

Q. There is no speculation about that?

A. Oh, no.

Q. Mr. George, prior to 1918, how many mills were there operating in this section of California?

A. Well, I don't really remember just what year the Calaveras and Yosemite were started, but I think they were after 1918. In that case, there would be four.

Q. About three or four prior to 1918, would you say?

A. I would say so, yes.

Q. On how many of these mills were prices based prior to 1918?

A. I beg your pardon?

Q. On how many of these mills were prices based prior to 1918?

A. I couldn't answer that without looking it up.

Q. Do you recall whether there was a sole basing point at Davenport prior to 1918, Mr. George?

A. I would say that prior to 1918 Cement also was a basing point.

8785 Q. The town of Cement?

A. Yes, sir.

Q. What effect, if any, did the War Industries Board have upon that situation?

A. Well, in 1918, it strikes me it was, the War Industries Board made a very careful survey of the situation and fixed basing points at Cresmore, Cement, Davenport, and I don't know but what they included Marmolet.

Q. Do you publish any price lists, Mr. George?

A. Occasionally.

Q. Do you send them to your competitors?

A. Yes.

Q. Why do you send them? Will you explain to

8786 the Examiner why you send them to your competitors?

A. Oh, for no particular reason except as a matter of courtesy. We have them on the mailing list.

8789 Los Angeles, Calif.,
July 14, 1938.

Appearances:

The same as heretofore, except for the following:

Robert B. Murphy, Esq., and Alex Davis, Esq., (Pacific Mutual Building, Los Angeles, Calif.), representing the California Portland Cement Co.

Pierce Works, Esq. (Title Insurance Building, Los Angeles, Calif.), representing the Riverside Cement Co.

Richard Burges, Esq. (First National Bank Building, El Paso, Texas), representing the Southwestern Portland Cement Co.

8790 C. C. MERRILL, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

I am vice president and general manager of the Southwestern Portland Cement Company. I have been vice president for 31 years; general manager twelve or thirteen, I do not exactly remember.

8791 Our legal headquarters are in El Paso, Texas. We have one mill at Victorville, California; one at El Paso, Texas; one at Osborn, Ohio. The approximate capacity of the Victorville Mill—the maximum would be 6,000 barrels a day. We never ran a full year. Our yearly capacity would be about 1,750,000 barrels at Victorville; El Paso around 1,000,000 barrels; Osborn, Ohio, about 1,800,000 or 1,850,000 barrels. These capacities are based on the time when the plants are in the very best condition with no interruptions—based upon a best operating period of several months, not to exceed three months. Over a
8792 twelve-month period Southwestern could produce 1,700,000 barrels at Victorville; we could produce 1,000,000 barrels at El Paso; about 1,800,000 barrels at Osborn, Ohio. Over the period of the last four or five year period as a whole, the relation of the production of Victorville to its capacity has been about 75%, possibly 80%; El Paso about 33⅓%, Osborn, Ohio, about 50%. There have been times within this period when the proportion of production to capacity has run considerably lower; it has dipped to 30% at Victorville, 30% at El Paso and 25% at Osborn.

Q. Has the higher percentage of production at Victorville, has that been the result, largely, of Government orders?

A. To a large extent.

8793 Pardon me a second: I say "Government orders"; Government and local development work.

Q. You mean local work financed by the Government?

A. I had in mind the Metropolitan Aqueduct which I do not consider as financed by the Government.

Q. I see. You include Boulder Dam in the category of the Government projects which have helped the production of the Victorville plant?

A. Yes, sir.

Q. How much of the Victorville production during the time you were supplying the Boulder Dam requirements was due to the Boulder Dam order?

A. I haven't those figures; I couldn't tell you.

Q. Could you approximate the percentage?

A. No, I could not.

The Osborn, Ohio plant is the newest one owned by the company. It was built twelve years ago. The building of

the El Paso plant was started in 1907 and finished
8794 in the forepart of 1909. Victorville was started in 1915 and finished in 1916.

Q. Will you describe generally the selling territory in which each mill of your company operates?

A. I am not familiar with those territories.

Q. Not even of the Victorville plant?

A. I could give you in general the Victorville plant, yes.

Q. What is that?

A. Well, it runs on a line, part of San Luis Obispo County, part of Kern County, part of Inyo County, south; some western Arizona, little in Nevada, some of the Hawaiian Islands.

Q. Mr. Merrill, the counties that you named in your recent answer, they are all California counties, are they?

A. San Luis Obispo and Kern Counties, and Inyo County, yes; all California counties.

Q. Did you name any other counties?

A. No. I mentioned Arizona.

Q. Yes.

8795 Is the management of the El Paso and Osborne plants handled from Los Angeles?

A. Yes, sir.

Q. Under whose direction?

A. Both myself and the president.

Q. And the president is whom?

A. Mr. F. H. Powell.

Q. Has that been the situation throughout your connection with the company?

A. Yes, sir.

Q. Have you in that way established the price policy of the company at the various mills?

A. No, sir.

Q. How has that been done?

A. Left to the sales managers at the different plants.

Q. Who are they?

A. T. K. Partridge, sales manager in Los Angeles; W. R. Blair, El Paso; Mr. George Warren, Osborne.

Q. Do you know what the maximum net mill price is at El Paso and Osborne?

A. No, I do not.

Q. Do you get reports of it from time to time?

A. I wouldn't know when they were maximum.

Q. You do get reports of their mill prices?

A. Yes.

8796 Q. You don't know what they are at the present time?

A. No, I do not.

Q. Do you know what the maximum mill net at your Victorville mill is?

A. No, I do not.

Q. Do you know what the range of mill nets is at Victorville?

A. No, sir.

Q. Is your chief California market the City of Los Angeles, within the City of Los Angeles?

A. It would be a guess on my part but I would assume that what is termed the metropolitan area would be the chief consuming market, year in and year out.

Q. Does it represent as much as half your sales?

A. I wouldn't know.

Q. Mr. Merrill, did you receive a subpoena calling for the production of certain papers here today?

A. No, sir.

Mr. Burges: Perhaps his attention should be called that that came in his absence.

Mr. Wooden: Oh, I see.

Mr. Leisure, [on behalf of Southwestern] in re-
8797 sponse to a subpoena, tendered certain papers. These were marked for identification as Com. Exs. 1270 A to 1270 N, inclusive; 1271 A, 1271 B, 1272, 1273 A to 1273 L, inclusive, 1274 A to 1274 F, inclusive, 1275 A to 1275 K, inclusive, 1276 A to 1276 G, inclusive; 1277 A to 1277
8798 E, inclusive. The witness does not remember the telegram Com. Ex. 1270 A, but undoubtedly he received that telegram from Mr. F. H. Powell. It is one of the papers produced from the witness' files under subpoena.

Your Honor, I offer in evidence a copy of Commission's Exhibit 1270-A, and return the original.

Mr. Leisure: Your Honor, we object to the introduction of this telegram in evidence, not on the grounds of identification, but it is incompetent and irrelevant.

8799 Q. Mr. Merrill, Mr. Powell—F. H. Powell—is the president of your company?

A. Yes, sir.

8800 (COM. EX. 1270-A was offered and received in evidence.)

Q. Now, Mr. Merrill, showing you the documents

marked 1270-B to 1270-J, inclusive, is that a letter that you received from William J. Jennings of your Osborne, Ohio, plant (handing documents to witness)?

A. This is a letter I do not recall receiving. If I did, I have forgotten it. The first time that I ever saw this letter was when I saw the copy of the letter taken by Mr. Bouldin.

8801 A. I do not recall I have ever seen Mr. Jennings use his initials that way.

By Mr. Wooden:

Q. Do you recognize his handwriting?

A. Yes, I would; his entire signature.

Q. Well, with what you have there, isn't that his handwriting?

A. I would say it resembles it, but I am not positive.

Q. Compared with Exhibit 1270-K and L;, is that his complete signature?

A. That is not Mr. Jennings' signature. This looks more like it (indicating document).

8802 Mr. Wooden: Your Honor, so far as the date is concerned, January 10, 1929, the letter also carries as part of the date, Friday, January 10, 1929, and a check with a calendar will show that Friday came Jan-
8803 uary 10, 1930, instead of January 10, 1929, which was after the formation of the Institute, and the document describes attendance at a meeting.

Mr. Wooden: Your Honor, it contains statements describing the writer's attendance at a meeting of the Cement Institute, what occurred there, and he was connected at the time with the Respondent Company.

8804 By Mr. Wooden:

Q. What was Mr. Jennings' connection with the company, Mr. Merrill?

A. He was first a salesman and later sales manager. I don't know just when he became sales manager. I can find that out, but I don't—

Q. Is he still with you?

A. No, he is not.

Q. What has become of him?

A. I haven't heard of him for about a year. The last I heard of him, he was still living.

8806 Examiner Norwood: Do you know his handwriting, Mr. Jennings'?

Mr. Wooden: I think he said it looked like it.

The Witness: I am not positive.

Examiner Norwood: Is that his handwriting (indicating)?

The Witness: I am not positive.

By Mr. Wooden:

Q. Would you say it looked like it, Mr. Merrill?

A. I don't think that he wrote straight up and down like that.

Mr. Leisure: The witness said he never knew Mr. Jennings to sign his letters by his initials. That is what the testimony shows.

Examiner Norwood: Well, would he authenticate a copy by initialing it?

The Witness: I couldn't answer that.

Examiner Norwood: I think we will have to hold that until it is identified further.

Mr. Wooden: Your Honor, I submit that it is admissible at the present time on the strength of its production from the files of the Respondent company.

8807 Examiner Norwood: I think so; that is, if it is shown to be relevant, but I think we will have to show that the writer was connected with some of these respondents before it becomes relevant.

Examiner Norwood: I shouldn't like to accept it without further information.

Mr. Wooden: I want to substitute the offer of the original, then, for the copy. I thought we were not going to have any such difficulty as this over identification.

Mr. Zimmerman: Where is the copy?

Mr. Wooden: The copy is here. Here is the copy.

Mr. Leisure: Well, I think Counsel should simply 8808 offer the original and have it marked for identification pending—

Examiner Norwood: Yes, it is already marked.

Mr. Wooden: It is already marked.

Examiner Norwood: And he can keep that until he can show—

Mr. Works: If the Examiner please, may the record show our objection on behalf of the Riverside Cement Company; namely, that this document constitutes inadmissible hearsay and no proper foundation has been laid as to that Respondent in view of the fact that the Respondent in

question joined the Cement Institute in 1933. This relates to events occurring in 1929, or prior thereto.

8809 Mr. Zimmerman: I want to adopt that objection, as far as Marquette Company is concerned. We would have no means of knowing, as far as the record shows, anything about any of these transactions that occurred prior to the time when this Respondent joined the Institute, during the code period in 1933, and under the provisions of a set of articles of association that were then existing. I don't know whether they existed at this time or not, but there is certainly no connection shown. A further objection would be, that there has been no showing that the document relates to any practice or method of competition that is still being carried on and that could possibly form the basis of any present cease and desist order. There isn't a situation here where we are attempting to trace some kind of a conspiracy under an anti-trust law to penalize somebody or to punish them as to some transgression that they made within the period of the limitations at all.

Examiner Norwood: Well, I shall not receive it at this time until I get some more information about it.

By Mr. Wooden:

Q. Mr. Merrill, do you know Charley Irvin, who is mentioned in this exhibit, 1270-B to J, inclusive?

A. I know who he was, yes. I understand he is not living now.

8810 Q. Who was he?

A. He was connected with some cement company with offices in Chicago. I don't just recall what company it was, now.

Q. Do you know who the Mr. Clugston was who is mentioned in this letter?

A. Yes.

Q. Who was he?

A. He was our sales manager.

Q. Where?

A. In Ohio.

Q. At the time this document was purported to have been written?

A. No.

Q. When?

A. He had left our employ, and Mr. Jennings was put in temporarily as sales manager.

Q. Do you know who Miss Gilliland is?
A. Yes.
Q. Who is mentioned in the paper?
A. Yes.
Q. Who is she?
A. She is the head stenographer from Ohio.
Q. Do you know who Harry Jennings is that is named in the paper?
A. Yes, sir.
8811 Q. Who is he?
A. He is secretary of the Wabash Cement Company.
Q. Do you know who the Sam Stevenson was who is named?
A. No; I had heard the name in connection with some eastern cement company. I did not know who he was.
Q. Do you know who Mr. Horner was, who is named?
A. No, I do not.
Q. And Mr. McFarland?
A. If it is the McFarland that I have in mind, he was connected with the Medusa Company.
Q. Was he at one time connected with the Atlas Company?
A. I couldn't say as to that.
Q. Is Mr. Powell's first name Frank?
A. Yes.
Q. Now, Mr. Merrill, I show you a paper marked as 1270-K—

Mr. Leisure: Just one second, on that letter, Mr. Wooden, before you leave that. We would like to make one further objection. May we have that letter just a second?

Your Honor, we would like to add one further objection to this letter. The body of the letter purports to be addressed to Mr. Merrill, and then the postscript indicates that he is addressing another person, because it says, "Now, Frank," and goes ahead describing a Mr. Powell.

So that that adds further to the uncertainty of
8812 the letter.

Mr. Wooden: I think it adds further to the certainty, you might say.

Mr. Leisure: What I mean is this, the body of the letter is wholly unsigned, which purports to be written to Mr. Merrill. Here is a letter unsigned purporting to be written to Mr. Merrill. Now, there is a postcript with the initials which purport to be written to another man.

Mr. Wooden: The president of the company.

Mr. Leisure: But the body of the letter is not and has not, in any event, been identified in any way.

Examiner Norwood: Well, I am not receiving it until we have further identification, anyway.

Mr. MacIntyre: Your Honor please, let us make this observation at this time, that this letter was produced here this morning in response to a subpoena duces tecum that called for it by description, and the attorneys, as well as the officers of the Southwestern Portland Cement Company, submitted it in response to that subpoena. Evidently, it was officially identified in the subpoena and sufficiently for them to bring it in.

Examiner Norwood: That goes to its identification, which I consider sufficient.

If but information as to the writers, and so forth,
8813 as I have indicated, it appears to be relevant.

Mr. Wooden: The subpoena called for a letter from Mr. Jennings to Mr. Merrill. That was what was brought in.

Mr. Leisure: Your Honor, I want to make very clear, this last point which Mr. Wooden adds, to its certainty. I want to make very clear that it is the postscript only which has been in issue.

Examiner Norwood: I understand that.

Mr. Leisure: And this postscript might have been added to anyone's letter. It doesn't follow that Mr. Jennings wrote the letter merely because of the initialed postscript. He might have been mailing someone else's letter to Mr. Merrill to which he attached the postscript.

Mr. Wooden: The subpoena called for Mr. Jennings' letter to Mr. Merrill. That is what was brought in in response to the subpoena.

Examiner Norwood: Have you a copy of the subpoena?

Mr. Wooden: Yes. Have you the original subpoena?

Examiner Norwood: I have this copy, here.

I shall study it and rule. The subpoena definitely describes it and it has been produced.

Mr. MacIntyre: It is produced, yes.

Mr. Leisure: The letter is produced as being the
8814 only letter which comes anywheres near following the description of the subpoena.

Mr. MacIntyre: From the files of the company.

Mr. Leisure: That does not mean Mr. Jennings wrote

the letter simply because Mr. MacIntyre said he did in the subpoena. We merely produced the nearest paper we had to the description in the subpoena.

Mr. MacIntyre: I haven't said Mr. Jennings wrote this letter. I have stated a subpoena duces tecum called for a letter Mr. Jennings did write, and in response they have produced this letter which was called for, in response to the subpoena.

Mr. Burges: But we don't know whether he wrote it or not. The letter was produced, as we conceived it was our duty to produce it. It is before you for what we think it is worth, if it is properly identified and shown to come from somebody coming from the company.

Examiner Norwood: Do any of these Respondents deny Mr. Jennings wrote the letter?

Mr. Leisure: The testimony of the witness is he never remembered having seen the letter before.

Mr. Wooden: No, not before.

Mr. Leisure: Well, three months ago.

Mr. Wooden: When it came from their files. He naturally wouldn't remember, independently, a letter
8815 written that long ago. We wouldn't expect him to.

Mr. Leisure: No showing as to when the letter was received or who wrote it, or when the postscript may have been added to it.

Mr. Wooden: There is a considerable collection of circumstantial evidence—

Examiner Norwood: What is this note that has been attached to the exhibit here; this typewriting, there? Do you know anything about that, Mr. Merrill (handing document to the witness)? Just look that over.

Mr. Burges: I think that is not offered in evidence.

Mr. Wooden: That is a note put on there by Mr. Bouldin of the Texas attorney general's office.

Mr. Burges: No; it was put on at the office here. This was taken out of the files, copied, and copies sent to Mr. Bouldin. That was put on this at the office. That was to show where it comes from. We simply do not know, ourselves.

Mr. Wooden: It is on the letterhead of the Southwestern Portland Cement Company at Osborne, Ohio; interoffice correspondence. Mr. Jennings' relation to the company has been described.

Examiner Norwood: I shall have to leave this open and compare it here with the description, and so on.

8816 Mr. Wooden: All right.

By Mr. Wooden:

In reply to the question whether he received a paper marked "Com. Ex. 1270 K and L" from Mr. Jennings, the witness said: "I don't remember the actual receipt of the letter, but it is addressed to me, signed—the signature I assume, to be Mr. Jennings'. No, that is signed by Miss Gillihand for Mr. Jennings." He recognizes "G" on there—she always puts on there. In reply to the question whether he recognizes her writing, the witness said: "Yes; having come to my files I have no doubt that I received it."

Mr. Wooden: I will offer that in evidence, Your Honor.

8818 (COM. EX. 1270-K and 1270-L was offered and received in evidence.)

Q. Now, Mr. Merrill, referring again to this paper marked Exhibit 1270-B to J, inclusive, and to the typewritten initials. Is that in the handwriting of Miss Gilliland?

A. No.

Q. I believe you said that you thought it looked like the handwriting of Mr. Jennings?

8821 (COM. EX. 1270-M and 1270-N was offered and received in evidence.)

Q. Mr. Merrill, showing you a paper marked 1271-A and B, for identification, will you say what it is (handing document to the witness)?

A. It is a communication from Mr. W. S. Mallory to Mr. F. H. Powell.

I have no knowledge or memory of ever seeing the letter before. Not being addressed to me, I haven't any recollection.

Q. Mr. Powell is the president of your company?

A. Yes.

Q. Was he also president of the Castalia Portland Cement Company at one time?

A. No, no, never had anything to do with it.

Q. You have had other communications from Mr. Mallory?

A. Well, I don't receive all of Mr. Powell's correspondence. I really couldn't answer that.

8822 Q. Do you recognize Mr. Mallory's signature?

A. No, I don't know the man, never saw him.

Q. Did you know who he was?

A. I had heard of him. I know that he was trying to work up some kind of a statistical bureau, but that is all the information I have regarding the man.

Q. Does this paper, 1271-A and B—did it come from among those that were in your files and a copy of which was furnished to Mr. Bouldin?

A. The slip attached indicates that it is, but I did not personally see it.

Mr. Wooden: Your Honor, I will offer it, and, if necessary, we can get further identification from Mr. Powell or Mr. Mallory. I will offer the original.

Mr. Leisure: If Your Honor please, we object to this exhibit on the ground that it is incompetent, irrevelant, and immaterial, and no proper identification has been made; and, specifically, the letter indicates that it was written by W. S. Mallory, who, according to the testimony of the witness, was attempting to sell some kind of a service.

Now, September 4, 1928,—the date will show that it is not in any way connected with the Institute, being long prior to its formation; and I submit that anything that a man might say by the name of Mallory while he was
8823 trying to sell a service of some kind does not come within the issues of this case; certainly not until he has been sworn and put upon the witness stand. It is also addressed to a Mr. Powell of the Castalia Company, and the testimony has just shown that he never had any connection with the Castalia Company. There has been no showing that the letter was acted upon in any way by any of the Respondents, so that I should say that it is clear the exhibit is totally incompetent and immaterial at the present time until some such showing is made. Some showing ought to be made that Mr. Mallory had authority to speak in some way connected with this case.

8825 Examiner Norwood: Well, the letter was produced under a subpoena duces tecum from the files of this Respondent, and it purports to be signed by him, and I think it may be rightfully presumed that the letter is as it purports to be under the circumstances. Now, the other letters merely had the initials. That is a different matter, I think. I think the issue is distinguished between those two cases.

(COM. EX. 1271-A and 1271-B was offered and received in evidence.)

8826 Q. Mr. Merrill, I show you a paper marked "Commission's Exhibit 1272," for identification. Can you say what it is and what you know about it?

A. I know nothing about it except that I saw the copy, saw this in the papers taken by Mr. Bouldin, copies of the papers. I have no knowledge of it. It is not addressed by me and not signed by me.

Q. When did you see that? When did you see that?

A. When Mr. Bouldin asked for the copies of certain papers.

Q. Some months ago?

A. I guess three months ago, maybe longer. Time flies.

Q. Who is M. A. Koffman?

A. He is our secretary.

Q. Secretary of the Southwestern Company?

A. Yes.

Q. Did Mr. Powell, your president, stay at the Hussman Hotel in El Paso?

A. I couldn't say.

Q. When he went there?

A. I couldn't say. I have no knowledge of it.

Q. Do you know in whose handwriting this is in the upper righthand corner, or whose it looks like, "F.H.P.-29"?

A. No, I wouldn't recognize it, Mr. Wooden.

Q. Your Mr. Powell did make trips to the El Paso plant at times?

8827 A. Oh, he does at times, yes.

Mr. Wooden: Again I will offer the original, Your Honor, as a paper produced under the subpoena calling for the production of that particular communication from the secretary of the company to the president, from an individual to an individual, who are secretary and president, respectively.

Examiner Norwood: Do you care to look at it?

Mr. Leisure: Yes.

(The exhibit referred to was handed to Mr. Leisure.)

Mr. Leisure: On Exhibit 1272, subject to our usual objection, that the exhibit will not apply to any other Respondents until it is connected up, we will make no further objection to this exhibit. It purports to be an inter-office communication between two members of this company, and submit that it should not be binding on any other Respondents unless there is some showing that it was brought to their knowledge, or in some other way connected with the other Respondents.

Examiner Norwood: Any further objections?

8828 Mr. Works: Yes, Your Honor. This is objected to on behalf of the Riverside Cement Company as being hearsay and no proper foundation laid.

(COM. EX. 1272 was offered and received in evidence.)

Mr. Davis: I suppose we are operating under a stipulation that an objection by one goes to the advantage of the others?

Examiner Norwood: That is the understanding. Also, we have a general understanding as to the connection between these papers.

The witness identified Com. Ex. 1273 A and B as a letter from Mr. Blair to Mr. Powell, in 1928. His memory does not serve him that long. He knows Mr. Blair's signa-

8829 ture. That is his signature. He does not know whose handwriting that is on that paper. He does not remember ever seeing the document. His memory does not carry him back that far. It is ten years.

8830 Q. Do you know Mr. H. C. Koch?

A. No. I have heard of him.

Q. I believe your Mr. Powell's first name is Frank?

A. Yes.

Q. Were the papers marked 1273-A and -B—and I have since had marked 1273-C, a card that is attached to those papers, were those obtained from your files by Mr. Bouldin?

A. I couldn't say. I couldn't identify it except by just looking at it. I don't know anything about this.

Q. Did you see them at the time they were obtained from your files?

A. No. I saw the copies after the copies were made.

Q. Did you see the copies of these papers?

A. I don't recall it, I may have.

Mr. Wooden: Your Honor, the witness has positively identified 1273-A as being a letter under the signature of Mr. Blair.

By Mr. Wooden:

Q. Mr. Blair is your El Paso sales manager?

A. Yes.

Mr. Wooden: And I offer that and call your attention to the fact that that paper makes reference to the other paper which is 1273-B (handing document to Mr. Leisure).

Examiner Norwood: Any objection?

8831 Mr. Leisure: Your Honor, here is a letter, an interoffice communication between two individuals of the

same company enclosing a memorandum purporting to be signed by a third party.. From the reading of the memorandum and from reading the letter I fail to see any connection between the matters discussed and the issues in this case. I think there should be some showing of relevancy. I don't see any.

I object to it as being incompetent and irrelevant unless there is some showing, some offer of proof that indicates they are connected to the issues in the case.

Examiner Norwood: Any further objection?

Mr. Zimmerman: May we see it, first?

Mr. Works: May we examine it before Your Honor rules?

Examiner Norwood: Yes, Counsel may see this.

(Counsel examine documents.)

Mr. Zimmerman: Have you a copy of that, Mr. Wooden?

(Mr. Wooden hands Counsel document who examines same.)

Mr. Works: Nothing further, here.

(COM. EX. 1273-A, 1273-B was offered and received in evidence.)

8832 Q. Mr. Merrill,. showing you a paper marked 1273-C and D, for identification, can you say what that is?

A. While it is not signed, it carries my initials here, put on by the stenographer and evidently I wrote it and it is just what it says.

Q. It is a copy of your letter to Mr. Blair?

A. I would acknowledge it as such, yes.

Mr. Wooden: I want to offer it in evidence, Your Honor.

Mr. Leisure: We have no objection.

Mr. Zimmerman: If the Examiner please, I can't see how these would have any connection with any issue in the complaint.

I wish Mr. Wooden would straighten us out on that just a little bit.

I don't want to waste time, but I do not want the record cluttered with matter that is not at all connected.

Mr. Wooden: It has reference, Your Honor, to a transaction in which a competitor of the Southwestern figured and an effort made to straighten out that transaction, according to what is stated in the paper.

Mr. Zimmerman: Yes, but there was no Institute
8833 at that time. There were no combinations of any

sort between the several respondents. It is purely a local matter.

Mr. Wooden: Many of these things are local, that is true.

Examiner Norwood: I think it is relevant.

Mr. Zimmerman: Though it ante dates the formation of the Respondent Institute?

Mr. Wooden: The complaint charges the past eight years, I believe, various activities carried on.

(COM. EX. 1273-C and -D was offered and received in evidence.)

Q. Mr. Merrill, I show you a paper marked 1273-E and -F, for identification. Can you state what that is?

A. This letter was not addressed to me. I don't doubt that as being Mr. Blair's signature. Just what is stated in the letter.

Q. Do you recognize Mr. Blair's signature, Mr. Merrill?

A. Yes.

Mr. Wooden: I offer it in evidence (handing document to Mr. Leisure).

8834 Mr. Leisure: Subject to our objection that this be confined to the Respondent mentioned, it purports to be an inter-office communication; until some showing is made that it is in some way connected with the other Respondents, I submit it should not be binding against them. I do not feel it is admissible in any event because it is dated May 21, 1928, a long time prior to the time the Institute was formed, so that unless there is something shown further than has been shown so far, it should not be received, even against the Respondent who wrote it.

Examiner Norwood: Any further objection?

Mr. Works: Could we see it, please?

(Counsel examine document.

Examiner Norwood: Anything further?

Mr. Works: Nothing further.

(COM. EX. 1273-E, and 1273-F was offered and received in evidence.)

Mr. Wooden: Your Honor, in order to correct the record, I wish to state that what I referred to as Exhibit 1273-C, being a business card of H. C. Koch, should have been numbered 1273-BB, in order to avoid conflict

8835 with another paper.

Examiner Norwood: What did you show with regard to it at the start? It was attached to the letter?

Mr. Wooden: It was attached to the memorandum referred to in the letter.

Examiner Norwood: Yes. Just mark it that way.

(Whereupon the paper heretofore marked "Commission's Exhibit 1273-C," for identification was marked "Commission's Exhibit No. 1273-BB," for identification.)

(COM. EX. 1273-BB was offered and received in evidence.)

Examiner Norwood: The card was produced with the letter, wasn't it?

Mr. Wooden: Yes.

(Whereupon certain documents were marked "Commission's Exhibits Nos. 1273-G to 1273-L, inclusive for identification.)

The witness identified Com. Ex. 1273 G to 1273 L
8836 inclusive as a memorandum between Mr. Partridge and Mr. Powell, complaining that the Colorado Portland Cement Company were pulling some fancy work. The Colorado Portland Cement Company is a competitor of Southwestern. T. K. P. are T. K. Partridge's initials. A. F. is Mr. Partridge's assistant. The memorandum says that this paper was among those obtained from his files by Mr. Bouldin. That is all he can say.

Mr. Wooden: I will offer this paper.

Mr. Leisure: Again, Your Honor, this exhibit is dated October 17, 1928, which is long prior to the formation of the Institute.

8837 (COM. EX. 1273-G to 1273-L, both inclusive, was offered and received in evidence.)

8839 Los Angeles, Calif.,
July 15, 1938.

8841 Mr. Wooden: Your Honor, I am now offering Commission's Exhibit 1270-A, the original instead of the copy.

Examiner Norwood: Yes.

Mr. Wooden: Which I offered yesterday.

Examiner Norwood: Make the substitution.

(The original telegram, Commission's Exhibit 1270-A, was thereupon substituted for the copy, heretofore received in evidence.)

C. C. MERRILL resumed the stand and testified further as follows:

Direct Examination (Continued) by Mr. Wooden.

Q. Mr. Merrill, referring to Commission's Exhibit 1270-B to J, for identification, there is a reference on 1270-C to Mr. Schmutz. Do you know who Mr Schmutz was?

A. Only by name. I knew that he was some cement
8842 —he was a cement man connected with some eastern cement company. I couldn't tell you just which one.

Q. Was it Bessemer, do you know?

A. I think it was. Is it Charles Schmutz?

Q. It speaks of Schmutz of Bessemer, so that answers that.

Did you know that your Mr. Jennings at any time was a member of an executive board in any district of the Institute?

A. I didn't know what his position was. I knew at the time that the Western Division, I think they called it, of the Cement Institute was formed that he was invited to participate.

Q. How did you know that?

A. I think he probably told me that, personally.

Q. Did you know him serving on the executive board of the Mid-West Division?

A. I did not know that he served, no.

Q. Wasn't Mr. Jennings manager of your Osborne plant at one time?

A. No, we never considered him manager.

Q. He was sales manager, you say?

A. He was sales manager, yes.

Q. Can you fix the time in which he was sales manager?

A. I don't believe I can. I can look it up for you.

Q. Will you look it up and let us know when he
8843 was sales manager?

A. Yes.

Q. And what other capacity he has held with your company, and when?

A. Yes.

Q. I am showing you now, Mr. Merrill, a paper marked for identification 1274-A and B (handing document to the witness). Will you say what that is?

A. It indicates a letter from Mr. W. H. L. McCoultrie of the Trinity Company to Mr. F. H. Powell.

Q. President of your company?

A. Yes. I can't add anything except what is in the letter. I don't recall the letter.

Q. Did you see this as among the papers that Mr. Bouldin, of Texas, obtained from your files, of which copies were made?

A. I don't remember that particular letter, but I assume that is true, carrying the note that it does on it.

Q. I am now showing you papers marked 1274-C to F, inclusive. Will you say what that is?

A. Well, the letter is not signed. Taking the two letters together I would assume that it was an answer written by Mr. Powell to Mr. McCoultrie.

Q. Was that among the papers which Mr. Bouldin obtained from the files of your company?

8844 A. I would say yes, carrying that notation.

Mr. Wooden: I will offer 1274-A and B, and 1274-C to F, inclusive (handing documents to Mr. Leisure).

Mr. Wooden: It is correspondence between officials of two Respondent companies, and some statements
8845 made in one which are indicative of the attitude of one of the Respondents towards price competition.

Mr. Leisure: Unless there is some further showing of proof made by Counsel for the Commission, I again ask Your Honor to exclude these exhibits. I submit that the attitude of one company toward competition would not

come within the terms of these pleadings unless there is some showing that there was some action taken, some acts done.

Examiner Norwood: I shall read the letter when Counsel is through with it.

Mr. Works: If the Examiner please, as to the pending offer on 1274-C to F, inclusive, Riverside Cement Company objects on the ground it is pure hearsay and no proper foundation laid.

I pass over the question of its obvious remoteness, in point of time.

Examiner Norwood: Any further objection?

Mr. Works: The same objection to 1274-A and B.

Mr. Zimmerman: I think it unnecessary to call attention to the objection as to their being in no wise connected with the Respondent whom I represent. I think that is understood—that is, as to all such exhibits, as to an objection being made.

Examiner Norwood: I shall examine the exhibits.

8846 Mr. Leisure: I would like to point out to Your Honor in examining these that the statement in there of the combination might be prejudicial because it appears on the face of that that some such combination took effect, and I am sure that the Commission will concede that no such combination did occur, so that there is an obvious error on the face of the document, itself, which might prove prejudicial.

Mr. Wooden: No one contends or suggests that all such suggestions were always carried out, of course. It was talked of, discussed.

Examiner Norwood: I don't see how that particular matter can be prejudicial inasmuch as there is no charge here of any such merger, combination.

Mr. Leisure: That is why I contend it should not be offered at this time, that it doesn't come within any of the issues.

Examiner Norwood: If the paper is received it will be received on account of other matters contained in the letter. I will read it and see.

Mr. Leisure: But someone later reading the letter, we don't know what part they might have reference to.

Examiner Norwood: I can't see anything in this 1274-A and B that is relevant in any way.

8847 Mr. Wooden: That is the second letter, Your Honor, and the answer to the first, and it is of more—

Examiner Norwood: Well, I will read that, yes.

Mr. Wooden: —consequence. If you don't read the first one it is hard to understand the second one.

(COM. EX. 1274-A to 1274-F, both inclusive, was offered and received in evidence.)

Mr. Wooden: Major Burges, may I ask you if the papers marked as 1275-A to K, inclusive, and 1276-A to G, inclusive, are papers which you furnished in response to an informal request given to you on the 12th of this month?

Mr. Burges: They appear to be, and what we took to be the items referred to. I took down at the time over the telephone the dates of the letters, and they were all apparently except one from Mr. Blair to Mr. Merrill, and I took the dates, and those are the copies that we found.

Mr. Wooden: These are the copies that came from the files of the Southwestern Company?

8848 Mr. Burges: Yes.

Mr. Wooden: At El Paso?

Mr. Burges: Well, all were in the files here except the one of November 16th, which we had to get by call.

Mr. Wooden: Are you willing, Major Burges, to agree that these are authentic copies from the files of the Southwestern Company, and that they are copies of what they purport to me,—the letters passing between El Paso and the Los Angeles office?

Mr. Burges: They are true copies, I am sure, of what they purport to be; that is, they are true copies of the originals from which they were made. Does that cover it?

Mr. Wooden: The originals in the files of the company?

Mr. Burges: Well, we did not find the originals, but we did find these copies. Now, that was the thing I explained to you that we were so fussy about, where the originals are, I do not know, but these were made from the originals, and we have no doubt they are correct.

Mr. Wooden: Are you willing to waive any further identification of them?

Mr. Leisure: There is no call for any waiver. He stated what they are: They are copies of the originals, and the copies were found in his file.

8849 Examiner Norwood: You can use the copies in the absence of the originals.

By Mr. Wooden:

Q. Mr. Merrill, I show you papers marked 1275-A to D, inclusive, consisting of what purports to be a letter ad-

dressed to you by Mr. William R. Blair, April 25, 1936. Will you identify that as a copy of a letter which you received from your Mr. Blair?

A. I have received similar letters from him. Of course, it is hard to identify this letter without a signature, but the statement having been made that they are copies of letters from our files, I personally wouldn't question it.

Q. You have no doubt about it being a letter that you received from Mr. Blair?

A. I would assume that to be correct, yes.

Mr. Wooden: I will offer that in evidence, Your Honor.

Mr. Leisure: Subject to our understanding that these letters will not be connected with any other Respondent other than the Respondents involved, we have no objection to this exhibit. I mean, that they will not be connected with any other—

Examiner Norwood: Will not be considered against
8850 them unless they are connected.

Mr. Wooden: Yes. It depends on that, of course, but I can't agree that there is no connection shown.

Mr. Zimmerman: I don't think it necessary that we have any agreement about there being no connection shown. The question is whether Mr. Wooden can point out anything in the record that does connect it.

Mr. Wooden: In the exhibit, itself, I think there is some statement that connects others.

Examiner Norwood: Well, these items of evidence must be connected somewhere in the record with each Respondent against whom they may consider.

Mr. Wooden: Of course, Your Honor, that involves the whole question of—

Examiner Norwood: Oh, yes.

Mr. Wooden: —of how far the acts of one in an organization of this sort are binding upon the others.

Examiner Norwood: Yes.

Mr. Wooden: It is a legal question.

Examiner Norwood: I think the record shows that we are clear on that subject.

Any further objection?

Mr. Leisure: As to the Exhibit "C" in the document now being offered, we do object to that, it being a copy
of a telegram, there being no showing in any way as to
8851 how it came into being, incompetent, irrelevant, and immaterial.

Examiner Norwood: It came from the same files?

Mr. Leisure: I am referring to the exhibit marked "D."

(There was a discussion off the record.)

Mr. Leisure: As I understand it, the telegram is not being offered, and the exhibit should be marked "1275-A" and "1275-B." Is that correct?

(There was a discussion off the record.)

Mr. Leisure: 1275 is marked "A" to "D," Your Honor. Apparently there were other copies which had consisted of four pages. There are only two, however, in the offer that is being made of the letter.

Examiner Norwood: All right.

Mr. Leisure: Is that correct, Mr. Wooden?

Mr. Wooden: Yes, I think so.

Examiner Norwood: Off the record, now.

(There was a discussion off the record.)

By Mr. Wooden:

Q. Mr. Merrill, I show you a paper marked for identification 1275—

Examiner Norwood: Wait a moment. I haven't ruled on that 1275-A to D.

Any further objections?

8852 Mr. Zimmerman: Nothing further.

(COM. EX. 1275-A to 1275-D, both inclusive, was offered and received in evidence.)

Q. Mr. Merrill, I show you a paper marked 1275-E and F, for identification, purporting to be a copy of a letter addressed to you by William R. Blair, May 16, 1936. Will you identify that as a copy of a communication which you received from Mr. Blair?

A. While, of course, I can't posifively identify the letter without Mr. Blair's signature, it is matters upon which he would write people.

Q. A weekly letter?

A. Yes.

Q. You have no doubt that you received the original of that from Mr. Blair?

A. Undoubtedly I did.

Mr. Wooden: I offer it (handing documents to Mr. Leisure).

Examiner Norwood: Any objection?

Mr. Leisure: No objection, subject to our objection 8853 that it will not be considered as binding against the other Respondents, unless it is connected.

(COM. EX. 1275-E and 1275-F was offered and received in evidence.)

Q. Mr. Merrill, I show you a paper marked for identification 1275-G and H. Will you identify it as an authentic copy of a letter you received from Mr. Blair dated May 23, 1936?

A. I would have to identify this, Mr. Wooden, the same as I would the other, there being no signature on it.

It is matters that Mr. Blair would write me on.

Q. You have no doubt that that is—

A. I have no question that I received the original letter.

Mr. Wooden: I offer it in evidence (handing document to Mr. Leisure).

Examiner Norwood: Any objection?

Mr. Leisure: No objection.

(COM. EX. 1275-G and 1275-H, was offered and received in evidence.)

Q. I now show you, Mr. Merrill, papers marked for
8854 identification 1275-I, J, and K. Will you identify them as a copy of a letter received by you from Mr. Blair under date of July 25, 1936?

Examiner Norwood: Make the two sheets I and J for the first sheet, and the last one, K.

A. I would identify it in the same manner; yes, sir.

Mr. Wooden: I offer it in evidence.

Examiner Norwood: Five-minute recess.

(There was a short recess taken.)

Examiner Norwood: The hearing will come to order. 1275-I, J, and K are under consideration.

Any objections?

Mr. Leisure: Subject to the same understanding.

Examiner Norwood: Yes.

(COM. EX. 1275-I, 1275-J, and 1275-K, was offered and received in evidence.)

Q. Mr. Merrill, showing you a paper marked 1276-A, B, and C, for identification, will you identify it as an authentic copy of a letter received by you from Mr. Blair, dated April 13, 1929?

Examiner Norwood: How many sheets is that
8855 composed of?

Mr. Wooden: Two sheets.

Examiner Norwood: We will mark it "A" and "B" for the first one, and "C" for the second one, you see, so that each sheet will have a designation.

A. I would identify it in the same manner, Mr. Wooden.

Mr. Wooden: I offer it in evidence.

Examiner Norwood: Any objection?

Mr. Works: Nothing further, Your Honor.

(COM. EX. 1276-A, 1276-B, and 1276-C, was offered and received in evidence.)

8858 (COM. EX. 1276-D and 1276-E was offered and received in evidence.)

Q. Showing you, Mr. Merrill, a paper marked 1276-F and G, one sheet; will you identify it as a copy of a letter received by you from Mr. Blair, and dated August 11, 1936?

A. I have no doubt I received it.

Mr. Wooden: I offer it in evidence.

8860 Q. Mr. Merrill, will you tell us what these arbitrary or zone prices in the El Paso district are, and why they were put in?

A. I am not sufficiently familiar with the situation to make a clear statement of it. I leave that entirely to Mr. Blair.

Q. Do you know why the arbitrary or zone prices

8861 were put in there?

A. I do not. I do not know the reason except he must have thought it was the proper thing to do.

Mr. Leisure: I think, Mr. Wooden, 1276-F and G have not been received.

Mr. Wooden: I am sorry.

Mr. Leisure: That, Your Honor, is a mere inter-office communication, and in reading it through I fail to find it comes under any of the issues in the complaint.

Examiner Norwood: This is the paper furnished from the files?

Mr. Wooden: Yes, that is a paper furnished from the files by Major Burges. The witness has identified it, I believe.

Examiner Norwood: The Southwestern Portland Cement Company?

Mr. Wooden: That is right.

(COM. EX. 1276-F and 1276-G was offered and received in evidence.)

8862 Q. Can you say, Mr. Merrill, whether or not the arbitrary or zone prices around El Paso were in order to meet the competition of foreign cement?

A. I could say they were not put there to meet foreign competition. We met the foreign cement situation with the cheaper brand of cement.

Q. Was it in order to keep the El Paso dealers from shipping out of their territory?

A. I couldn't answer that, Mr. Wooden. As I stated, we leave those matters to the judgment of our sales managers.

Q. Showing you papers marked as Exhibit 1277-A to E, inclusive—

Examiner Norwood: 1277?

Mr. Wooden: Yes. "A" to "E," inclusive.

By Mr. Wooden:

Q. Have you seen that before (handing the exhibits to the witness)?

A. I couldn't say that I have seen this letter. I have seen something similar. This is back in 1928. That is too far for me.

Q. Did you see it among the papers which Mr. Bouldin obtained from your files?

A. I looked through those papers hurriedly. I had no doubt it was there on account of the location, and it didn't make any particular impression upon me such as 8863 would cause me to remember that particular paper.

Q. This is addressed to Mr. Powell, the president of your company?

A. Yes.

Mr. Wooden: I am going to offer it, Your Honor.

Mr. Leisure: If Your Honor pleases, this is another letter from a man by the name of W. S. Mallory. It was written back on August 15, 1928, and it is written to Mr. Powell, president of the Southwestern Portland Cement Company, and the purport of the letter seems to be that he is setting out certain economic philosophies of his own, the purpose apparently being to obtain a new subscriber. Now, surely, we are not bound by any such letters of that kind. It is long prior to the time that he was connected in any way with the Institute.

Examiner Norwood: A new subscriber to what?

Mr. Leisure: He wanted to get a new subscriber to a private statistical service, or something similar, that he was publishing.

Mr. Wooden: That doesn't show on the face of it.

Mr. Leisure: It can't possibly be binding upon any of these Respondents.

Examiner Norwood: This was the man who later worked for the—

Mr. Wooden: Yes.

8864 Examiner Norwood: —Institute?

Mr. Leisure: More than five years later.

8867 Examiner Norwood: I shall hold this up until this afternoon. I want to look it over carefully. That is 1277-A to E.

By Mr. Wooden:

Q. Mr. Merrill, can you say where Mr. Powell is?

A. Where he is?

Q. Yes.

A. I know he is out of town and will not be back 8868 until the first of the week.

Q. He is nearby, I suppose, and will be back the first of the week?

A. I understand so.

8869 Q. Referring again to this Exhibit 1270-B to -J, for identification. You don't have any real doubt, do you, Mr. Merrill, that you received that in the ordinary course of mail from Mr. Jennings (handing document to the witness)?

A. I cannot say either way. I have no recollection of it so if I have no recollection, I can't say that I have no doubt that I received it.

I do not recall the letter. I have no knowledge of it.

Examiner Norwood: How did it get in your files? Do you know anything about that?

The Witness: I do not know that, sir.

Mr. Leisure: Who is the letter addressed to, Mr. Merrill?

The Witness: It is a letter addressed to two people.

Mr. Wooden: Addressed to Mr. Merrill.

The Witness: With a postscript to another party.

Q. I understand, Mr. Merrill, that you leave the matter of pricing in the hands of your sales manager at each plant?

A. Yes, with only one instruction to them: That is, to meet the competition and to get all they can for the 8870 cement. The rest is left to them.

Q. In meeting the competition of other mills, do you aim to meet them on a delivered price basis?

A. Not in all cases.

Q. So far as the commercial trade is concerned?

A. Yes, that is true.

Q. That is true so far as the commercial trade is concerned?

A. Yes.

Q. How do you go about meeting competition on the cases where sealed bids are asked for?

A. That would be handled by the sales department. They would determine that, not I.

Q. You don't know how it is done?

A. No.

Q. Do you find that, ordinarily, the delivered prices of your company on commercial business is the same at given destinations as the prices of other mills?

A. I know it has to be, if we get any business.

Q. You mean it has to be as low as that of the other mills?

A. Yes.

Q. Do you make any effort to make your delivered prices on commercial business any lower than other mills?

A. We don't have to, with Victor products.

Q. You don't have to with what?

8871 A. We don't have to, with Victor products. We can get as much as anybody.

Q. You don't need to and, therefore, you don't try to?

A. No, sir.

Mr. Wooden: Nothing further with Mr. Merrill.

Examiner Norwood: Cross examine him.

Q. Showing you, Mr. Merrill, a paper marked 1278, for identification. Will you identify it as a copy of a letter written by you to Mr. Treanor, John Treanor, July 24, 1935?

A. Yes.

Mr. Wooden: I will offer it in evidence.

Mr. Works: No objection by the Riverside Cement Company.

8872 Q. Was this list of net cement prices referred to a list of basing point prices at various points?

A. That was the list that was compiled in our own office from information received from our three different plants as to the prices then existing in the territory in which they competed.

Q. Are those the mill base prices?

A. In some cases. Some were commercial prices as they found them; going prices, you might say.

Q. The net prices referred to, however?

A. Well, going net prices.

Q. Weren't those the mill base prices?

A. I think they were. I think they were all figured back to the mill.

Q. Some mill base?

A. Yes. They were figured back to the mill whose products the price had been obtained.

Q. Well, you knew there were a number of mills in that part of the country, the eastern part of the country, that were not basing points, did you not?

8873 A. Yes. I don't know how complete the list was.

Examiner Norwood: You could tell that by checking back on the price, couldn't you?

The Witness: Yes. That is what was done.

By Mr. Wooden:

Q. Have you exchanged, at other times, lists of such prices?

A. No. Mr. Treanor asked me for that in connection with a letter he wrote to the president of the Federal Trade Commission. I remember he explained to me at the time why he wanted it.

Q. Wasn't that a year before?

A. I couldn't say. I don't know when he wrote the letter, but that was—

Q. July, 1935?

A. That was a letter that he—that was his explanation to me, that he wanted them in connection with a letter he was writing to the Federal Trade Commission. Whether he ever wrote the letter, or not, I have no knowledge.

Q. What is the paper marked 1279, for identification?

A. This is evidently some land-grant rates that

8874 Mr. Keller of the Cement Institute voluntarily furnished us with which our traffic department did not agree.

Mr. Wooden: I offer it.

Mr. Leisure: With reference to Exhibit 1279, you mean the Pacific Coast Institute when you say "Mr. Keller," Mr. Merrill?

The Witness: How was that?

Mr. Leisure: Did you have reference, just now, when you answered Mr. Wooden, did you have reference to the Pacific Coast Institute?

The Witness: Pacific Coast Cemen Institute.

Mr. Leisure: We have no objection.

Mr. Works: None.

Mr. Zimmerman: None.

(COM. EX. 1279 was offered and received in evidence.)

8883 T. K. PARTRIDGE, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

I am sales manager, Southwestern Portland Cement Company for the company's Victorville mill. I have supervision or connection with sales partially from the El Paso mill and so far as the Arizona business is concerned. I have been the sales manager about 15 years I presume.

8883 Q. What is the respective territory, selling terri-
8884 tory, of the El Paso and the Victorville mills?

A. Well, Victorville serves the territory pretty generally that Mr. Merrill testified to, and El Paso covers a part of Arizona, New Mexico, and a portion of West Texas.

Q. What is the place in Arizona where the selling territory of the El Paso and Victorville mills meet?

A. Well, we usually move everything that we can from the El Paso mill into Arizona. I might say that there are some points where it is more advantageous in Western Arizona to move it from Victorville.

Q. Well, will you give the place or places in Arizona where the El Paso mill ends its westward selling territory and the Victorville mill ends its eastern territory?

A. Well, in Centrol Arizona I believe our rates are equal, and to all of the Salt River Valley around Phoenix and as you get into Southern Arizona El Paso has more favorable rates out as far as Tuscon, a point west of Tuscon.

Q. Does your El Paso mill sell in Mexico?

A. Very little.

Q. Old Mexico, I mean?

A. Very little.

Q. Is it the freight rates which determine which mill you will ship from in that territory in Arizona where the two mills meet?

A. To some extent, but principally for the reason
8885 that under normal business conditions El Paso has a very sparsely settled trade territory. Therefore, we try to throw the business we can to that mill.

Q. What other mills sell in the territory that is served by your El Paso mill?

A. All of the Southern California mills and some from Colorado, even some from Central California.

Q. What is the freight rate from your Victorville mill into the Los Angeles market?

A. Rail freight?

Q. Yes.

A. I believe the present rate is 6½ cents a hundred pounds, rail rate.

Q. How does that compare with the rates from the other Southern California mills?

A. In Los Angeles proper I think that is the same rate as is applicable from Monolith, and it is 2 cents a hundred higher than the rates from Crestmore and Coulton.

Q. Is that just an impression of yours, that the rate of Monolith is the same, or are you sure of it?

A. That is my recollection. I don't refer a great deal to freight rates by rail.

Q. Is there some territory to the north and west of your Victorville mill where you have an advantage over the Crestmore and Coultor mills in freight?

8886 Q. North and west?

Q. North and east.

A. Now, I believe, they are all equal rates into Arizona and Nevada. There may just possibly be a slight difference in the published rail freight rates in our favor between that point and the interstate rates, you may say, where they flatten them out on a uniform basis. I wouldn't know, without referring.

Q. How large a place is Victorville?

A. A very small place.

Q. How large or how small?

A. Well, I don't really know the population of Victorville, but I think it is principally made up of employees of our company.

Q. Do you have any local markets near Victorville?

A. Very little.

Q. Do you have any dealers in Victorville?

A. Yes; there is a lumber yard there.

Q. Handling your cement?

A. I think so.

Q. What is the price at Victorville of your standard cement.

A. Well, I believe the price at Victorville is—the dealers' cost is about $1.80 net stripped of sacks and discount.

Q. And in paper what does that come to?

A. Twenty cents a barrel higher; $2.

8887 Examiner Norwood: Is that the delivered price to the dealer?

The Witness: That is the carload list price at Victorville. I thought tht is what he referred to.

By Mr. Wooden:

Q. You have the same price in Los Angeles as in Victorville?

A. Exactly.

Q. There are a number of other points, are there not, in Southern California where you have the same price in effect?

A. That is a fact.

Q. Regardless of differences in the cost of delivery?

A. That is right.

Q. You have your prices in Southern California set up on a zone basis?

8890 A. I wouldn't say that that is exactly a fact. The established prices in a very large area, which you might term a zone, are on a common basis.

By Mr. Wooden:

Q. They are the same, in other words?

A. They are the same.

Q. Even though the transportation element within

8891 that area is different at different points?

A. That is quite true. That is quite true.

Q. Yes. How many such zones, if you please, are there, which you described as the same?

A. I could describe the territory over which that flat price prevails. In so far as our list is concerned, it extends form the mountains, you might say, to the sea, and down to almost San Diego County on the south, and up to the Ventura County line on the north.

Q. How many zones wtithin that area are there?

A. I don't know any zones, or recognize any zones, as such.

Q. How many areas within that large area are there where the prices of your company are the same at different points?

A. Well, it is the same at all points within that—

Q. Within a particular zone? How many differences in price are there within that area?

A. There aren't any.

Q. Within the large area? I don't mean within the particular zone.

A. Well, there aren't any differences in the area I have just prescribed. There are different prices as we go beyond that area.

Q. How many other areas are there than the one you have described where, within the area, the prices are the same?

A. I couldn't say without referring to a price list.

8892 Mr. Wooden: Mark this, please.

(The document referred to was thereupon marked "Commission's Exhibit 1280-A to 1280-G," both inclusive, for identification.)

By Mr. Wooden:

Q. Are the papers which I show you now, marked 1280-A, B, C, D, E, F, and G, for identification, is that a copy of your current price list?

A. It is.

Q. Now, by referring to it, will you answer the previous question as to how many areas there are in which the prices are the same at each point within the area?

Mr. Leisure: What is the date on that, Mr. Wooden? Is that on there?

Mr. Wooden: I think it is.

The Witness: Effective December 10th.

Mr. Leisure: December 10, 1937.

A. Well, there are a great many differences of price, in reviewing the entire price list, beyond this zone. We will find that Ventura County, for instance, is pretty generally the same price at most points unless they happen to be very far removed from the mountainous district, or something of the kind, where there is a differentiation over the general flat price.

The price list steps up as we go toward San Diego.

8893 For instance, San Diego is about 20 cents a barrel higher than this flat zone that we mentioned, and then as we go toward the Imperial Valley prices are higher proportionately. We can take a common point, El Centro. El Centro is about 36 cents a barrel higher.

Q. You have a map, or do you use a map which shows the boundaries of the different areas?

A. We do not.

Q. Has there been such a map used in this territory, to your knowledge?

A. Yes, I think there was one issued by one of our competitors a good many years ago.

Q. Does that map still represent the divisions between the areas within which prices are the same?

A. It doesn't represent a thing, to us.

Q. Do you have a copy of it in your office?

A. No, I haven't, not that I now of.

Q. Have you ever had one?

A. Oh, I probably have.

Q. Do you get copies of it from the Riverside Company?

A. I might have, but that wouldn't have been necessary. I could readily have gotten it from the dealers.

Q. Such maps were distributed widely among the dealers, regardless of the area?

A. It is my recollection that it was.

8894 Q. Your price list has been the same, has it, as that of the Riverside Company?

A. Well, our price list has—no, not always. Our price list—

Q. Generally?

Mr. Works: I don't think the witness has finished his answer.

A. Our price list has always been based upon the last known price, either established by us or competitors, at any destination.

Q. Is your price list published for distribution, generally, to the trade?

A. It is.

Q. Has it always been?

A. Well, since the effective date of the code we have maintained the practice of publishing price lists and distributing them generally to the trade.

Q. Prior to that time you did not?

A. Not as a general practice. We issued some prior to that.

Q. The Riverside list,—has that been distributed to the trade generally a longer time than yours?

A. I believe it has.

Q. In other words, it was distributed to the trade, generally, prior to the code?

A. It was.

8895 Q. Did you receive it from the Riverside Company?

A. Well, now, I have no way of knowing definitely whether I received it from them or not, but I presume I did. I think they mailed their price list out in the same manner that we do.

Q. And you received it in the mail?

A. I don't recall, as to that. I probably did.

Q. Have you been accustomed to exchanging your price lists with other cement mills in this vicinity?

A. Well, I wouldn't say exactly exchanging. I have mailed our price lists to other competing companies in this area.

Q. You have done that regularly, as you got them out?

A. Whenever we issued a price list, we have.

Q. You got theirs regularly, as they issued theirs?

A. I believe we have.

Mr. Davis: I take it that refers to Riverside?

Mr. Wooden: No, other mills.

By Mr. Wooden:

Q. State what mills you have received price lists from.

A. We, I believe, have always received a price list from the Santa Cruz mill in the north.

8896 Q. Which ones on the south?

A. Well, I believe Riverside is the only one I recall. I don't know that the others issue price lists.

Q. Have you received any from California?

A. I believe not.

Q. From Monolith?

A. I believe I did, too, a list that was issued in compliance with the provisions of the Code. I believe I had all four company price lists at that time, during that period.

Q. During that period?

A. Yes, sir.

Q. Your answer, then, is that you have not received them from those companies for the period since the Code?

A. That is right.

Q. The price lists of the Southwestern Company of which you have one before you there, marked Exhibit Number—will you just refer to the number, please?

A. 1288.

Q. You found the prices in your lists to be the same as the prices in the list of the Riverside Company?

A. I don't know that I have any price list of the Riverside Company to correspond with that one at all.

Q. Haven't your delivered prices at any given point ordinarily been the same as those of the Riverside Company?

8897 A. Well, we presume that they have.

Q. Why did you presume it?

A. Well, we wouldn't be able to sell it if they weren't approximate, or, in fact, the same.

Q. You would be able to tell if they should be lower, of course.

A. I doubt it.

Q. You don't think they have been lower, anyway?

A. I wouldn't think so.

Q. Can you tell me how the price in your list within the different zones is computed, what factors go to make it up?

A. There are no factors that were used to make it up other than the established price which we had knowledge of.

Q. What established price had you had knowledge of?

A. The then existing price.

Q. The then existing price in the Riverside list, for instance?

A. No, as we found it in the territory.

8898 Q. Then I am asking you how you determine how
8899 much to include in your price for freight.

Mr. Leisure: Now, just a moment. The witness hasn't said yet that he did include it in that way. It seems to me we should have some testimony first that he did it in that way before the witness is asked to explain how he does it. He hasn't said he made his price up in that way at all. In fact, he said the opposite. He said he met competition.

Examiner Norwood: You do include the freight in the price, do you not?

The Witness: It has no real bearing upon our calculation. We get all we can at destination, which is the established price.

Examiner Norwood: But you do include the freight in your price?

The Witness: The freight is included in our price.

Examiner Norwood: Yes.

The Witness: But we wouldn't take it into consideration because we reserve the right to move that cement with our own equipment if we elect to do so.

Examiner Norwood: Now read the previous question. I will overrule the objection and ask the witness to answer it.

8900 A. We don't determine that at all. We sell on a delivered price basis as we find it. It isn't a case of our attempting to calculate the price by these various factors.

Examiner Norwood: Can you take the other fellow's price without any calculation in regard to that?

The Witness: We do, because we choose our own method of transportation.

Examiner Norwood: Who is it that makes this price?

The Witness: Anybody might make it, any mill.

Q. The only mill you get price lists from is the Riverside; is that right?

A. Well, I would say we are governed by our own price list there. I wouldn't, for instance, be certain that we received price lists from the Riverside Company at this time.

Q. Well, I think you testified—

The Witness: They can better—

Q. —that you had been receiving it?

A. We have over a period of a good many years, back over which period I thought you were referring to.

Q. Yes.

A. But I don't believe of late they have been dis-

8901 tributing price lists, on second thought. I don't know.

Q. How late?

A. I don't really know. I know that we have been. They would be able to tell you. I couldn't.

Q. Are you the only one that is now distributing price lists?

A. I don't know.

Q. To the trade?

A. I don't know that.

Q. Don't you know what the other mills are doing in that general way?

A. I have just testified, I believe, that I don't know what they are doing.

Q. You don't know whether you are the only one that now distributes the price lists to the trade?

A. That is correct. I do not know.

Q. This list of November, 1937, was the first one that you ever distributed to the trade?

A. No. No.

Q. When did you begin?

A. Well, we distributed generally our first price list in compliance with the Code back in 1933. Since that time we have fallen into the practice of publishing price lists and giving them general distribution, as I stated before.

Mr. Leisure: Excuse me. You seem to have left
8902 the zone question. I take it we have the same objection on this question of pricing that we had to the zone system with respect—

Examiner Norwood: It is apparent that it relates entirely to intrastate.

Mr. Leisure: Yes, so the objection applies?

Examiner Norwood: That is understood.

By Mr. Wooden:

Q. Do you mean to testify, Mr. Partridge, that your company puts out a price list including delivered prices without knowing what the freight factor in those delivered prices amounts to?

A. Why, yes. We don't take that into consideration at the time we put the price list out. We get all we can for the cement delivered as has been previously established.

Examiner Norwood: Then you make no prices independently of your competitors?

The Witness: We might. We might. That would only be found out by issuing a price list.

8903 Q. Then your price lists are not made independently of what your competitors are asking, are they?

A. They certainly are independently made but based upon the best knowledge that we have of what our competitors are quoting in any area.

Q. If a competitor puts out an increased list, you follow it?

A. If it pleases us, we do.

Q. Doesn't it please you?

A. Ordinarily, it would.

Q. Have you put out any different prices in your price lists in the last two years than the lists of your competitors?

A. Oh, yes.

Q. Can you give specific instances of it?

A. Well, we attempted, for instance, in one price list that I recall—I don't know the exact date—a flat increase of 18 cents a barrel. I can give you the date, too; it was on November 10 preceding this list.

Q. 1937?

A. Yes.

Q. You mean you put out an increase that others didn't follow, or what?

A. It so happened that they didn't follow and we had to revise it to the present list.

8904 Q. Do you have any other instances where the price lists have not been the same?

A. Oh, a good many times we have had to revise price lists that we attempted to put into effect, yes. I don't know of specific—

Q. Within the last two years?

A. I don't recall. We have had to amend them by supplement due to changes made by our competitors.

Q. Wasn't it a custom or practice here for a number of years for the Riverside Company to be the only company that put out a price list to the trade?

A. It seemed to be the custom, yes.

Q. Do I understand that your company, so far as you know, is now the only one that does so?

A. Well, I believe that that is a correct statement. I don't know that anyone else in Southern California has a published price list at this time. I haven't one.

Q. You haven't received any?

A. No, I haven't.

Q. Not even from the Riverside for some time?

A. No, I have not, not as I recall.

Q. Not since November, 1937?

A. I think not.

Q. Did you use the Riverside price list as a basis in making up your list during the time that you were

8905 receiving it from them?

A. I might have at some time, in part.

Q. Did you ever use any other company list for that purpose?

A. Not that I recall. I used some of the changes that have been filed by other competitors. Yes, I—

Q. "Filed"? What do you mean, "filed"?

A. On file with the trade. I recall, for instance, an

occasion when Monolith issued a price list, or a supplement to their price list changing all the price in Owens Valley, based on trucking.

Q. When was that?

A. I don't recall when. You asked me if we ever used anybody else's list.

Q. Can't you approximate that time?

A. No, I can't remember that.

Q. Has it been since the code period?

A. Yes, I think it was. I think Monolith had a price list in general circulation up until the enactment of the Robinson-Patman Act. That is my diagnosis of their discontinuance.

Q. What is the maximum mill net that you have obtained at your Victorville mill?

A. In figures?

Q. Yes.

A. Well, didn't we furnish all of that information to you? Would we be required to testify as to mill nets 8906 here for the benefit of our competitor?

Q. I am asking for your maximum, not average.

Examiner Norwood: Maximum mill net price. If it isn't a trade secret you might tell it.

By Mr. Wooden:

Q. Isn't your Victorville price the highest?

A. No, not necessarily.

Q. Well, what is it?

A. Well, I would say, without any actual figures, I would have to refer to the records, but I would presume our maximum mill net would probably be determined upon some of the cement that we haul with our own equipment.

Q. At Victorville?

A. Anywhere in the territory. Elsewhere in the territory, in fact, I have in mind.

Q. You get more on mill nets at some considerable distances that you do right at your mill?

A. I think possibly we might, if we took our own transportation into consideration as a factor.

Q. Even by rail, do you net more on distance deliveries, at times?

A. Well, I don't think of any location where that might be the case.

Q. Your delivered price by car is the same at the mill as in Los Angeles, isn't it?

8907 A. That is right.

Q. Then don't you net more on the business at Victorville than you do at Los Angeles?

A. That is theoretical. If there is any movement in carload lots we would, but there isn't any sold there in carloads.

Q. On such as you do sell, even though it is less than cars, isn't your mill net at Victorville greater than at Los Angeles?

A. Yes, it would be.

Q. Do you have competitors selling cement into Victorville?

A. Not that I know of. There isn't any business there to speak of.

Q. You have them coming into rather nearby points, I suppose?

A. Well, really, the nearest thing of any consequence to Victorville is San Bernardino, where we all compete for business.

Q. Do you have a freight advantage into San Bernardino?

A. No, we have not.

Q. Does any other mill have it over you?

A. They should have. They are within five or six miles, I think; the Coulton mill is.

Q. Do you make up, individually, the Southwestern Company's lists?

A. It is under my supervision; yes, sir.

8908 Q. Who are the parties who make up the list under your supervision?

A. A number of clerks in the office.

Q. Do you have any assistant sales manager or traffic manager work on it?

A. Well, principally—yes, we might use the traffic manager in checking destinations and costs,—transportation costs. Very little, however. It would principally be made up by an assistant in my office, and two or three clerks; as many as it would have to take.

Q. Who is the assistant that makes it up?

A. His name is Fargher.

Q. And the traffic manager?

A. C. R. Boyer.

Mr. Wooden: Your Honor, I haven't offered this price list marked 1280-A to G, inclusive. I will offer it now.

Mr. Leisure: No objection.

(COM. EX. 1280-A to 1280-G was offered and received in evidence.)

8909 By Mr. Wooden:

Q. Mr. Partridge, did I understand you to say that you put out a price list dated November 18, 1937?

A. I believe it was November 30, 1937.

Q. Did you put one out that you had to withdraw, or did withdraw?

A. That was November 10th.

Q. Was that list ever actually put into effect?

A. No, it was not.

Q. It was just a tentative list that you withdrew?

A. We cancelled it and substituted therefor the list dated November 30, which we just looked at.

Q. Were you the first one to get out the November 30th list?

A. We were.

Q. Who was?

A. We were.

Q. You were. What changes were made compared to the prices that were in effect before that time?

A. It was 10 cents a barrel less.

Q. All through the various areas?

A. That is correct.

Q. What was the occasion for the 10-cent reduction?

A. We found one of our competitors were quoting 8 cents a barrel increase instead of the 18 that we proposed.

8910 Q. So you came down to the eight?

A. We came down to the eight.

Q. Who was that?

A. Coulton, California Portland.

Q. Did you get out the first price list proposing an 18-cent increase?

A. We did.

Q. Now, in cases like that where you were the first one to get out an increase in price, how did you go about determining what the prices were to be at the different points within the various areas or zones?

A. Well, in that particular instance, we merely added the 18 cents to our then existing price list.

Q. What was the occasion for the 18-cent price increase?

A. We thought that the price should be advanced 18 cents per barrel.

Q. Was there any particular occasion for the advance?

A. Well, we had a discussion of it. I discussed it with the management and we felt that the additional costs that we were subject to should justify an 18 cents a barrel increase, and we were hopeful that we could put it up 18 cents. That is all there was to that.

Q. What additional costs do you have reference to?

A. Well, those are factors that could probably be better explained by someone familiar with the operating
8911 end of it: Increase in labor costs, and power, and fuel.

Those are usually the factors that are taken into consideration.

Q. You had increases in those last November?

A. I believe we did.

Q. What instructions do you give your asistants when you tell them to make up a new list?

A. Well, in that instance, it is merely a matter of reissuing a price list 18 cents a barrel higher than our present list. That is merely a matter of routine, adding 18 cents a barrel to all the points shown in the price list, and having the printer print it for us.

Q. How many points were involved in which you found that competitors were not following your 18-cent advance?

A. Oh, that I couldn't say. We picked it up in enough places to convince us that that was the increase instead of the 18-cent increase.

Q. Did you find they failed to follow it at all points, or just at some points?

A. Naturally, we couldn't say that we found they failed to follow it at all points, because that would be a physical impossibility, but we found enough to convence us that they weren't going to raise the price 18 cents a barrel.

Q. At all points?

A. That is right.

Q. You changed it back at all points, then?

8912 A. Yes; that is the way we believe is the correct method.

Q. You actually got an advance of 2 cents over what the price had been theretofore?

A. Two cents? Eight cents a barrel.

Q. What are the papers marked 1281 and 1282, for identification, Mr. Partridge?

A. 1281 is our price list of October 12, 1936, and supplements thereto, and 1282 is our price list of December 2, 1935, and supplements thereto.

Q. Now, do those lists, coupled with the one that is marked 1280-A, etcetera,—do those include all the lists you have issued in that period of time since 1935?

A. No, I don't think so. I think we gave you a number of other lists than that.

Q. I mean all the lists for that particular territory, Southern California?

A. Well, I don't know. I really don't know. We may have issued others in that interim there.

8913 Q. Did you intend to furnish, or undertake to furnish the lists for a whole period, or just your current lists?

A. You asked for all of the price lists from January 1, 1935, to date. and I believe we furnished them; all of our price lists. There certainly are more than three.

Mr. Wooden: Off the record.

Examiner Norwood: Off the record.

(There was a discussion off the record.)

Mr. Wooden: Your Honor, at this time I will offer Exhibits 1281 and 1282, which the witness has just identified.

Mr. Leisure: No objection. I take it that these exhibits are subject to our same objection as being intrastate business?

(COM. EX. 1281-A to 1281-Q, and 1282-A to 1282-R, both inclusive, were offered and received in evidence.)

8914 Mr. Wooden: Your Honor, I have here various other price lists of the Southwestern Company which have been marked, for identification, 1283-A to blank, inclusive; 1284-A to blank, 1285-A to blank, 1286-A to blank, 1287-A to blank, 1288, 1289, 1290, 1291, and 1292, all A to blank. I assume that it need not be necessary to ask for identification of each particular one, and I will offer them at this time.

Mr. Davis: Could you read what each one is, Mr. Wooden, so we can identify them when they are referred to?

Mr. Wooden: 1283-A to blank is the list of January 30, 1935. The territory appears on the face of it.

1284-A to blank is the list of June 2, 1935, without stating the territory, which is on the face of it.

1285-A to blank is of October 21, 1935.

Examiner Norwood: Did you get the number of pages? Are the pages numbered?

Mr. Wooden: The Reporter hasn't done that as yet.

Examiner Norwood: I mean, are the pages in the manuscript numbered,—in the lists?

Mr. Wooden: They are not numbered beyond the first page, I believe. That will have to be done: There are supplements in each one.

Mr. Leisure: Subject to our objection as to intra-
8915 state business, we have no other objection.

(COM. EX. 1282 to 1292, both inclusive, were offered and received in evidence.)

Mr. Wooden: I should say, Your Honor, that included among these price lists are some for Arizona and Southern Nevada.

Mr. Zimmerman: Were you going to finish those dates?

Mr. Wooden: Yes. I was interrupted.

Mr. Zimmerman: Yes.

Mr. Wooden: 1286 is a Southern California list of April 1, 1936.

1287 is a Southern California dealer's list, November 10, 1937.

1288 is an Arizona dealer's list for November 10, 1937.

1289 is a Southern Nevada dealer's list of November 10, 1937.

1290 is an Arizona dealer's list of November 30, 1937.

1291 is a dealer's list of Southern Nevada, November 30, 1937.

8916 1292 is a Southern Nevada list for dealers, April 6, 1938.

These are all price lists put out by the Southwestern Portland Cement Company as of those dates.

By Mr. Wooden:

Q. Mr. Partridge, referring to your price list for Arizona, Exhibit 1290, dated November 30, 1937, you have a price there, have you not, which is $3.20, in paper, delivered at quite a number of stations in Arizona?

A. It might be.

Q. Don't you recall sufficiently to say that $3.20 is your price at a number of stations in Arizona?

Mr. Leisure: It would save time if you showed him the price list. Counsel has it in his hand.

Mr. Wooden: I will be glad to do so.

By Mr. Wooden:

Q. (Handing a paperwriting to the witness.)

A. Yes, there is a number of points where the price is $3.20.

Q. Isn't it a fact that you have the price of $3.20 in effect at a considerable number of stations on the Santa Fe Railroad, although the freight from your mill to those points is different?

A. Oh, might be.

Q. Well, isn't it so?

8917 A. Well, I don't know without checking the freight rates. We probably didn't pay any attention to that, though; as I previously testified we simply took the established prices.

Q. Has it obtained as shown in the list of another company?

A. No; in that instance it is a case of merely adding the potential advance to our current price list.

Q. You added it in Arizona as well as in California?

A. Yes, we did.

Q. And in Nevada, also?

A. Yes.

Q. Don't you have in Arizona a similar arrangement whereby you have the same delivered price at a number of stations although the freight is different?

A. No, not similar to metropolitan Los Angeles, I wouldn't say.

Q. Well, I mean, similar in that respect, that the freight is different but the price is the same at various points taking different freight rates?

A. I don't know that that is a fact at all. I don't know of any similarity.

Q. You would say that as far as you know there is no set-up in your Arizona price list that carries the same prices for destinations based on different freight rates?

A. No, no, I do not.

Q. Referring to Exhibit 1281, your list effective

8918 October 12, 1936, aren't your prices in that list $3.12 in Arizona, at Kingman and Holbrook and Arntz?

A. $3.12 Holbrook?

Q. Yes.

A. Kingman, $3.12?

Q. Yes.

A. That is correct. And what other point?

Q. Arntz.

A. I never heard of it. Yes, that is correct.

Q. Now, aren't your freight rates widely different from your mill, to those points?

A. I don't know.

Q. You don't know what your freight rate is to any of those points?

A. Without referring, I don't know, off hand.

Q. You talk about basing your price list upon the established price that you find. Established by whom?

A. Anybody; either ourselves or our competitors, as far as that is concerned. We find the established price.

Q. When you establish it, yourself, how do you establish it?

A. Well, I have just related how we have attempted to establish the prices by a flat increase. If we establish an entirely new price, if that is what you are attempting to bring out—

Q. That is what I mean.

8919 A. —it would be a remote instance, but it would probably be predicated upon some reason that we had found, there,—a change in price there.

Q. What reasons do you have in mind?

A. Well, probably the nature of the work involved, or it might be—I don't know of any instance of that kind. I am just trying to visualize what might be the case.

Q. The fact of the matter is, you have never established a price of your own, independent of what you have found others were getting?

A. Oh, yes, we have.

Q. Can you identify some instance of that sort?

Mr. Davis: Is that for points on the Santa Fe Railroad in Arizona?

Mr. Wooden: Anywhere.

A. I don't think of any at this particular time. We undoubtedly have, though, at times.

By Mr. Wooden:

Q. You can't name any?

A. I don't recall any; no, sir; right now.

Q. Do you make the same price on sealed bids that you make in your dealers' prices?

A. That would depend upon the nature of the project.

Q. Well, what kind of project would you do so and what kind wouldn't you?

8920 A. Well, sealed bids you refer to would probably mean Government projects or municipal projects of considerable magnitude, and it has been my observation that they haven't been sold at list price by any means.

Examiner Norwood: Sold lower?

The Witness: Yes, they have.

By Mr. Wooden:

Q. What basis do you have for figuring on?

A. Well, it is just a wild guess, usually.

Q. Do you try to anticipate,—meet competition in that respect?

A. We certainly do.

Q. On what basis do you anticipate what competitors will bid?

A. Well, of course, any public bidding you always have the previous record to go by, and that would be a method of reckoning what your competition might do.

Q. Would you bid the last bid price that you knew of?

A. If we thought they were going to bid that. If we thought they were going to bid lower we would bid lower. It would depend on whether they were going after the order or not.

Q. What do you mean by "going after the order"?

A. There is a question of whether you wanted to take it at less than the previously established price or take a chance on getting it at that price.

8921 Q. Sometimes they do bid the established list price?

A. Oh, in small quantities, yes.

Q. Showing you papers marked 1205-D to I, and 1205-K to L, inclusive, for identification, Mr. Partridge.

A. This price is apparently of the Riverside Cement Company of March 1, 1929.

Q. Now, referring to 1205-K and L, is that a circular issued by you?

A. It is, to our salesmen.

Q. And making reference to the Riverside lists of the same date?

A. That is correct.

Q. You sent out the Riverside lists to your salesmen at that time, did you not?

A. I probably handed them one with this bulletin because it says, "I am handing you herewith the price lists."

Q. Did you have your salesmen then carry the Riverside price list as the basis for their activities?

A. I did not have them do it, but I presume they did.

Q. You gave it to them for that purpose?

A. If they wanted to use them that way, yes.

Q. Well, didn't you give instructions that they should use them?

A. Well, I haven't read the bulletin. I may have. I probably did.

8922 Mr. Wooden: I will offer at this time, Your Honor, Exhibits 1205-D to I, and 1205-K to L, inclusive. They were previously identified as coming from the files of the Southwestern Company by Mr. Milwee, I believe.

Mr. Leisure: These exhibits go back to March 1, 1929. We object to them as being incompetent, irrelevant, and immaterial, both because they are so remote and because they relate solely to intrastate business.

Examiner Norwood: Any further objections?

Mr. Zimmerman: I haven't seen any of the exhibits as yet.

(Counsel examines exhibits.)

Examiner Norwood: Any further objections?

(No response.)

Examiner Norwood: Received 1205J as marked.

(COM. EX. 1205-D to 1205-I, inclusive, and 1205-K and 1205-L, were offered and received in evidence.)

Q. Showing you papers marked for identification 1205-O and P, Mr. Partridge, will you identify them as photographic copies of two letters passing between

8923 you and Mr. Warner of Denver, of the Colorado Portland Cement Company and Mr. Powell, the president of your company (handing documents to the witness)?

A. They seem to be. That is a letter from Mr. Warner to Mr. Powell and a reply from me, in Mr. Powell's absence, I presume.

Mr. Wooden: I will offer them.

8924 Mr. Wooden: I might say, Your Honor, that these two papers were already identified by Mr. Milwee as coming from the files of the Southwestern Company.

Examiner Norwood: I believe I have the record of it.

Off the record.

(There was a discussion off the record.)

Examiner Norwood: Any objections?

Mr. Zimmerman: Just one more minute.

Mr. Leisure: Unless these exhibits are connected with some other company, we object to their being received as binding on such companies until a connection is shown.

Mr. Davis: I wish to add the additional objection to the letter from Mr. Partridge, dated August 20, 1929, of a past statement apparently said to be made by the witness, on the grounds it is hearsay. The witness is on the stand at the present time. The evidence would only be admissible by way of impeachment.

Mr. Wooden: It is admissible by way of admission.

(COM. EX. 1205-O and 1205-P was offered and re-
8925 ceived in evidence.)

Q. I am now showing you, Mr. Partridge, papers marked 1205-M, N, and Q, for identification. Will you identify them as circular letters? Are the letters "M" and "N" circular letters put out by your company, and "Q" a copy of a letter sent to H. A. Lake, president of the California Retail Lumbermen's Association?

A. That is correct. 1205-M is a circular of selling conditions put out by our company under date of July 29 of '29; and this is a letter over my signature to Mr. Lake, president of the Retail Lumber Dealers' Association, under date of August 30, 1929.

Q. When you referred to the last one as "this" you meant 1205-Q?

A. Well, whatever the number was; yes, sir.

Mr. Leisure: Yes, that is the last one.

We object to both of these exhibits, Your Honor, as being too remote to be of any value in this proceeding. They were written in 1929.

Examiner Norwood: Any further objection?

Mr. Zimmerman: Well, just a further objection and protest against encumbering the record with matters that
are so remote and not in any wise connected with
8926 any remedial relief that might be granted by the Commission.

Examiner Norwood: May I see those?

Mr. Works: I don't believe it proves or disproves any issue in this proceeding.

Mr. Wooden: Your Honor, I submit that they do relate to one of the paragraphs of the complaint.

Mr. Zimmerman: Which?

Mr. Wooden: Referring to the relations with dealers. I don't know which number it is right now—7-(f).

(COM. EX. 1205-M, 1205-N, and 1205-Q, was offered and received in evidence.)

Q. Referring to Exhibit 1275-A, Mr. Partridge, and calling your attention to the third paragraph of that paper, Mr. Blair asks Mr. Merrill to have you write him about the methods used in combatting foreign competition in Los Angeles.

A. Well—

Q. I am just calling your attention to it. And then in 1275-E and F, Mr. Blair writes that you had recently written him about it. That is on May 16, 1936, the third paragraph of that (indicating).

8927 Will you produce the letter which you wrote Mr. Blair about that matter?

A. What is the date of that letter? I will see if I can locate it.

Q. It is some time between April 25 and May 16, 1936.

A. In reference to foreign cement?

Q. Yes.

A. I will do my best.

Q. What was the method of combatting foreign cement in Los Angeles that Mr. Blair referred to?

A. Well, I really don't know. I will be better able after I see the correspondence. I don't know.

Q. Well, can't you state what it was from your recollection?

A. We haven't had any foreign cement here for so many years that I am rather hazy as to any light I might throw on the thing.

8928 Q. Did you have arbitrary prices in effect to meet it?

A. Well, on occasion it is my recollection we would have to reduce the price materially on some specific job if it was a matter of meeting foreign cement.

Q. You didn't put in arbitrary prices in the whole area?

A. Oh, no.

Q. Referring to Exhibits 1273-G to -L, inclusive, can you identify that as a memorandum that you submitted to Mr. Powell?

A. That is a memorandum from me to Mr. Powell.

8929 Los Angeles, Calif.,
July 19, 1938.

8930 Examiner Norwood: The hearing will come to order.

With regard to the pending exhibits, marked for identification, Commission's Exhibit 1270-B to J, I find on studying this long letter, that the postscript was evidently written by the same person, and the Jennings referred to in the main portion of the letter is Harry Jennings, and the letter purports to be written by William J. Jennings of the Southwestern, who was, as he says in the letter here, put on this executive board. So it is very clear as to the fact that the letter purports to be written by William J. Jennings, and initialed by him. I will therefore overrule the objections and receive that in evidence, Commission's Exhibit 1270-B to J.

(COM. EX. 1270-B to 1270-J, both inclusive, was offered and received in evidence.)

Examiner Norwood: The paper marked as Commis-
sion's Exhibit 1277-A to E is not received at this
8931 time until further connection and relevancy is shown in regard to it. It is marked for identification. If there is any further information to connect it up, we can consider it later on.

8932 T. K. PARTRIDGE resumed the stand and testified further as follows:

Direct Examination by Mr. Wooden (Continued).

Q. Mr. Partridge, did you locate the letter between April or May, 1936, regarding foreign competition?

A. I could not locate any such letter in our files here, and I called our El Paso sales manager, and he doesn't locate any letter.

Q. Do you remember such a letter was written?

8933 A. No, I really don't.

Q. Although it was asked for and referred to as having been written?

A. I believe it was, in that correspondence.

Q. What is the condition with regard to arbitrary zone prices in the El Paso district?

A. I have no direct knowledge of any arbitrary zones in the El Paso trade territory.

Q. You know there are such, do you not?

A. No, I don't.

Q. Haven't you written about them?

A. Not that I recall.

Q. You have seen the correspondence that went in here several days ago referring to the arbitrary prices in and around El Paso, have you not?

A. No, I haven't reviewed the testimony.

Q. You have some supervision, do you not, over the El Paso sales?

A. Well, only in so far as Arizona is concerned.

Q. Do you know whether or not other mills sell into El Paso?

A. I think not.

Q. You have a complete control of all the El Paso business, have you?

A. Pretty largely, I would say.

8934 Q. Well, is it complete or just nearly so?

A. Well, having no direct knowledge—I don't know of any other mill shipping into that territory. It seems to me it would be too remote for them.

Q. You can't tell me why the mill there has any arbitrary prices in the immediate district of El Paso?

Mr. Leisure: Well, just a moment. The witness hasn't said there was any there, so I don't know how he could explain why they are there. The witness has also told us he is not familiar with El Paso. He is not called as a witness representing the El Paso mill. I don't think we should pursue this examination.

Examiner Norwood: Read the question.

(The question was read.)

Examiner Norwood: The objection is sustained.

By Mr. Wooden:

Q. Mr. Partridge, has your mill at Victorville ever been known as a basing-point mill?

A. It has not.

Q. Have you known of the mills, Crestmore and Colton, being considered basing-point mills?

A. Well, it is my understanding that Crestmore was an established base way back during the time of the War Industries Board.

Q. And how lately have you known as it being base?

8935 A. Well, as such, I don't believe I would be qualified to say.

Q. Have you based your prices at times on the Crestmore mill base?

A. No, we have not.

Q. Never?

A. Well, not so far as making up our prices are concerned. We may have followed what you may have referred to as having been the base.

Q. You found prices that you adopted at various destinations figured back to a Crestmore base?

A. We might have analyzed it in that way; yes, sir.

Q. You have done that, have you?

A. Well, merely in figuring back to see what price they were selling at; we might have.

Q. Well, why do you say might have? Haven't you?

Mr. Leisure: And if he did I would like to have the time fixed, and under what circumstances.

Examiner Norwood: He may say whether he has and then he can tell when.

A. Well, not that it would have any bearing upon the price we put in. We certainly wouldn't use a Crestmore base plus freight, if that is what you have in mind, in compiling our price.

Q. You haven't done that?

8936 A. No, we have not.

Q. Even at a time when you recognized that Crestmore was a base price?

A. No, because I have already testified, I think, that we have always based our price list upon the destination price as we found it. Therefore, there would be no object in our figuring a price at somebody else's mill and adding our freight to it.

Q. Have you taken the destination prices of the Riverside Company as the basis on which you would make a comparison to find out what the destination prices at various places were?

A. Oh, undoubtedly we have, at various times.

Q. When you prepare this price list of yours how do you calculate the freight in terms of barrels as distinguished from hundredweight? What method do you use?

A. A barrel of cement weighs 380 pounds, multiplied

by the applicable rate, would give you the cents per barrel.

Q. What do you do with fractions?

A. You can't do anything with them, that I know. I don't understand. In what sense do you—

Q. I mean, do you adjust fractions or drop them or what?

A. Have no occasion to.

Q. Doesn't it frequently figure out to fractions of a cent per barrel,—the delivered price?

A. No.

8937 Q. Don't freight rates frequently come in half cents per hundred pounds?

A. They do.

Q. And multiplying that by the weight of the barrel doesn't that give you fractions less than a cent, frequently?

A. That is very true, but I am—

Q. That is what I want to know. What do you do with those fractions when you get them?

A. Mr. Wooden, I don't see how we would get them. We take the figured price. Freight calculation has nothing to do with our setting up a price list.

Q. You don't do any calculating at all, of your own?

A. Well, for what purpose? We might calculate what it nets us back at the mill.

Q. In making up your list you don't make any calculations at all to get your delivered prices?

A. No, not necessarily; as long as we take the delivered price.

Q. Do you make the calculations at all in your office?

Mr. Leisure: Now, "the calculations." Mr. Wooden is trying to bring out about freight and the witness is trying to tell him how they do it.

Examiner Norwood: I think he may explain that, if he will.

By Mr. Wooden:

8938 Q. You make no freight calculations in your office in making up the lists?

A. It isn't necessary. We publish our lists on the destination costs, which is usually in round figures regardless of—

Q. You say you make no freight calculations in making up your lists?

A. It wouldn't be necessary to do so, because we make our price lists on the destination costs, which is in round figures.

Q. All right. But do you say you do not?

A. Why, I may, in order to ascertain what we net at the mill, as a matter of interest.

Examiner Norwood: What is your practice, then, in case you get fractions? What is your practice about dropping them prior to quoting, say?

The Witness: Well, the freight is a component part of the delivered cost.

Examiner Norwood: Yes. Well, if the freight comes in a fraction, and that is added to the mill price, and that still leaves you a fraction, do you quote the purchaser or do you drop it or what?

The Witness: Well, as a matter of fact, the established market price would be in round figures per barrel. Therefore, I don't see how the fractional part of a cent represented in the freight has any bearing on it.

8939

Examiner Norwood: You would take the other fellow's price, then, in all cases such as that?

The Witness: Well, that has been our practice.

By Mr. Wooden:

Q. Do you sell at some points—do you quote at some points where no other mill does?

A. That would be hard to say. I would think not.

Q. Haven't you recognized the existence here of a basing-point system modified by a zone system?

A. No.

Q. You haven't recognized that any such thing exists?

A. No, that does not apply in this trade territory.

Q. What is the northern limits of the sales territory of your Victorville mill?

A. Probably northern San Joaquin Valley, in some instances.

Q. Do you meet the delivered prices of the Northern California mills when you go up into that area?

A. Yes, we do.

Q. By "meet them," I mean do you make your delivered price the same as theirs?

A. That is what we intend to do.

Q. Do you realize varying mill nets from your sales to customers at different destinations?

Oh, yes.

8940 Q. Wherever the cost of delivery is different, why, your mill net varies; is that right?

A. Naturally.

Mr. Davis: Is that intrastate or interstate business,—California or Arizona business?

By Mr. Wooden:

Q. That is true wherever you go, isn't it, regardless of location?

A. It would be.

Q. You get varying mill nets on your Arizona and Nevada business, do you not, depending on the variation in cost of delivery?

A. We do.

Q. What is the range of variation you realize in that way?

A. Well, that would be a hard thing to answer without referring to the records.

Q. Well, does it vary as much as 50 cents a barrel?

A. Between our high and low mill net?

Q. Yes.

A. Yes, I would think so.

Q. How much more?

A. Well, probably more—I am thinking of the lowest business that I have in mind would be our shipments to the Hawaiian Islands.

Q. Well, take your domestic business.

8941 A. Well, I wouldn't think there would be a variation of more than, oh, maybe 25, 30 cents a barrel.

Q. You are speaking now of an average?

A. Yes, aside from this very low business that we take on the Islands.

Q. The 50-cent variation included the Island business?

A. Yes, I had that in mind.

Q. And you have all sorts of ranges in that figure there?

A. We would have.

Q. After you deliver your cement to the railroad does the buyer assume responsibility for its delivery?

A. I think not, in commercial trade.

Q. Who stands the losses, if any?

A. We do, as a rule, if there happens to be any loss. I believe we would entirely.

Q. Do you guarantee the safe delivery of the cement shipped by railroad?

A. Yes, in practice, I think we do.

Q. In practice, but that is a voluntary offer on your part, or what?

A. Well, that is principally—I say that because for the most part we move our cement by truck from our mill.

Q. Well, I was talking about railroads when I asked you the question.

A. Well, that—

8942 Q. Who is responsible for the delivery?

A. Well, if a customer had a loss for any reason on a rail shipment I am inclined to think that we would not see him hold the thing, and file a claim, ourselves, if any was necessary.

Q. Well, what has been your practice?

A. Well, I don't recall any rail damages or losses.

Q. Don't you disclaim responsibility to the customer on such matters?

A. I think not.

Q. Do you represent to him that you are responsible for the safe delivery?

A. Well, probably not, but I merely testify as to what would happen in actual practice.

Q. But it hasn't happened, as far as you know?

A. Well, I don't recall any instance offhand.

Q. What proportion of your deliveries from the Victorville mill are made by truck?

A. On commercial business I would think easily 80 percent of it.

Q. Eighty?

A. I would think so.

Q. Are those company-owned trucks?

A. Principally.

Q. Have you in the past sold to dealers for de-

8943 livery in their own trucks at the mill?

A. Oh, yes, we have.

Q. Have you discontinued that?

A. Oh, we still use some dealers' trucks.

Q. What is the basis of price you charge in such cases?

A. Well, we sell them on the delivered costs, and pay them the rates as established by the Railroad Commission.

Q. Delivered costs by rail or how?

A. No, by truck. There is a very definite schedule of rates established by the Railroad Commission in the State of California for truck transportation as well as rail.

Q. The dealer can't save anything by delivering in his own truck, then?

A. No, I wouldn't think so.

Q. Did you ever have a condition here where dealers' trucks took delivery at the mill and trucked into high-priced territory and upset the market?

A. Well, undoubtedly there have been instances of that kind. That is one of our principal reasons for discouraging dealer trucking, as a matter of fact.

Q. What is the amount of dealer trucking? Is it rather negligible at the present time?

A. Very slight, yes.

Q. For how long has that been true?

A. Well, it has been largely true with our com-
8944 pany for as far as I can remember,—an indefinite period of time.

Q. As far back as you can remember?

A. Yes.

Q. Do you recall my asking you the other day about the difference of one dollar per barrel between the price at various points in Arizona, and the Los Angeles price?

A. No, I don't recall your mentioning anything about the difference of a dollar a barrel.

Q. I thought I mentioned $2.12 and $3.12. Do you remember that?

A. You might have in that manner; that is true.

Q. Well, is the present price in Los Angeles district $3.20 or $2.20?

A. $2.20.

Q. $2.20. And is the present price in Arizona at a number of points $3.20?

A. That is correct.

Q. Will you tell me why that Arizona price is exactly a dollar more than the Los Angeles district price at various points in Arizona?

A. I don't know that there is any reason why it should be exactly that. I think it probably just so happens that it is.

8945 Examiner Norwood: Any reason why it should be different?

The Witness: He asked why it was exactly a dollar more.

Examiner Norwood: Any reason why it should be a different price?

The Witness: Well, we have the cost of transportation.

By Mr. Wooden:

Q. The cost of transportation is different?

A. It certainly would be.

Q. Would you say that the varying costs of transportation or the cost of transportation would work out to exactly a dollar at different points in Arizona?

A. No, I couldn't say that.

Q. You don't think it would?

A. I don't know.

Q. Does your company maintain a membership in the Pacific Coast Cement Institute?

A. I believe we do, yes, sir.

Q. Were you one of the charter members?

A. I wouldn't say. I don't know if there are any charter members—

Q. I mean by that, were you one of the first members?

A. I believe we took part in it when the office was
8946 established in Southern California, here.

Q. What have you received in the way of service from the Pacific Coast Cement Institute?

A. Well, I believe they render a monthly report of the business booked and I believe they also render a monthly credit report.

Q. Do they also furnish you with land grant rate information?

A. I believe they have, yes, on occasion.

Q. Have you supplied them with land grant information?

A. I think not.

Q. What use have you made of the land grant information you have received from the Institute?

A. We had our traffic department check to see if we agreed with it.

Q. Have you used it in quoting on government business?

A. We might have. If his calculation agreed with our traffic department's calculation, we might have.

Q. Your calculations have been in the direction or in the form of translating hundredweight rates into barrel rates, have they not?

A. Well, we think we know how to figure the land grant rates, and have the facilities for doing so and arriving at it at cents per hundred and then arriving at the cents per barrel; that is quite correct.

8947 Q. Do you get it from the Institute only in the form of hundredweight rates or in what form do you get it?

A. Yes, that would be all he would furnish.

Q. Do you understand that the land grant rate information is final or accurate, or is it merely an approximate estimate?

A. I have never found any two men that figured it alike.

Q. Your own traffic department figured it differently from other traffic departments?

A. There is usually a variation.

Q. Have you not frequently arrived at the same government destination costs?

A. I don't recall that we ever did; any two people figuring the land grant rate.

Q. Haven't you quoted the same destination cost to the government on a number of bids that your competitors have quoted?

A. During the period of the Code, we did.

Q. Hasn't it been true since, at all?

A. I don't think so. I don't think there has ever been an instance where they were uniformly the same, Mr. Wooden. There may have, but I don't recall any.

Q. There are some exhibits in the record bearing on that.

I am showing you papers bearing the identification mark 947-D to G, inclusive. Do you identify those as copy of a memorandum which you sent to Mr. Warner and the 8948 attached land grant information?

A. That is correct. That is such a communication.

Mr. Wooden: Your Honor, these have already been admitted. I just asked the witness for supplementary identification.

Mr. Davis: May we see that, please.

(The documents were handed to Counsel.)

By Mr. Wooden:

Q. I show you paper marked 947-C. Will you identify that as a letter received by you from Mr. Warner? (handing document to the witness.)

A. That is correct.

Q. And one marked 947-O. Will you state what that is?

A. That is more land grant information furnished me.

Q. By whom?

A. I don't know. It doesn't say.

Q. On the letterhead of your company at El Paso?

A. I judge that was our traffic manager at El Paso, from just reading the letter.

Q. Can you say whether or not you obtained such information from the Ideal Cement Company, the Ideal Portland Cement Company?

A. I don't believe so. That seems to refer to exchange of rate information between the traffic departments.

Q. My impression is that that was furnished—
8949 produced by the Ideal Company from their file.

Showing you 971-7F and 7G. Do you identify the signature of Mr. Blair to that communication?

A. Yes, that is Mr. Blair's communication.

Q. And 971-10L, M, and N. Is that your signature to that document?

A. It is.

Q. And 971-12T, 12-I and 12J; is that Mr. Blair's signature?

Examiner Norwood: Those are already in evidence, are they?

Mr. Wooden: That is my understanding, yes.

8950 Mark these, please.

(The documents referred to were thereupon marked for identification as Commission's Exhibits 1294-A, 1294-B, and 1294-C.)

By Mr. Wooden:

Q. What are the papers I show you marked for identification 1294-A, B, and C, Mr. Partridge?

A. It is a letter from me to Mr. Blair.

Q. That is 1294-A?

A. Pertaining to the formation of the Southern California Cement Institute office; explaining it to Mr. Blair, asking him to mail me reports, if necessary; and 1294-B is a bulletin to the salesmen on our force here outlining to them what would be necessary for them to report to us so as to enable us to comply with the requirements.

Q. That is with regard to the reporting of contracts?

A. That is right.

Q. That is one function of the Institute that you didn't mention a while ago.

Was what continued?

A. Well, Mr. Wooden, you asked me what reports they furnished us, I believe.

Q. What service they rendered.

A. What service they rendered us. Naturally, in order for him to render that report it would be necessary
8951 for us to report to him what is booked, which is the only report we do make to him outside of the credit report.

Q. The only thing you report is the contract information?

A. Just the orders as booked, yes; the contracts as booked from day to day.

Mr. Wooden: I will offer 1294-A, B, and C.

Examiner Norwood: Are there any objections?

Mr. Leisure: Subject to its not being held binding on any other Respondent than the Respondent involved—unless it is connected up—we have no other objection.

Mr. Wooden: Of course, Your Honor, I can't concede that point. I am offering it for whatever force it may have regarding any and all Respondents.

Mr. Works: As to each of the exhibits, if the Examiner please, the Riverside Cement Company will object to them as pure hearsay and no proper foundation laid.

(COM. EX. 1294-A, 1294-B, and 1294-C was of-
8952 fered and received in evidence.)

Q. Has your company continued its membership in the Cement Institute, the national body?

A. I don't know.

Q. Has your company continued to get any service from the Cement Institute in the East after you became a member of the Pacific Coast Institute?

A. Not that I know anything of.

Q. You didn't get any land-grant information from the Cement Institute in the East after you went into the Pacific Coast Institute?

A. Not that I know of.

Q. Do you know whether or not the Cement Institute in the East was supplying land-grant information to its membership after the Pacific Coast Institute was formed?

A. I do not.

Cross-Examination by Mr. Leisure.

Q. Mr. Partridge, the other day, last week, when you were being questioned by Mr. Wooden, he asked you if it was the custom of the Riverside Company to put out a

price list alone, and I think you said—or whatever
8953 you said—I want to know now whether or not you meant by your answer that you considered that there was some custom among dealers, among cement manufacturers for the Riverside Company, to put out the price list alone. Did you mean to imply anything of that kind in your answer?

A. No, not at all. I think, if I recall correctly, I believe I said it was customary for them, or they followed that custom, or something of the kind. I don't recall that specifically.

Q. But whatever the questions were, the facts are that they were for a time putting out a price list alone; is that what you intended to convey by your answer?

A. Well, yes.

Q. You mean that they were the only ones that did put out a price list for a time?

A. Yes, that is correct.

Q. It was entirely an individual action on their part, as far as you know?

A. Well, it certainly was.

Q. Now, Mr. Wooden asked you also the other day whether or not you followed the Riverside price list. If you found a market price in a certain community varying from the Riverside price lists which would you follow, the Riverside price lists or the market price?

A. We would follow the market price if it suited
8954 us to do so.

Examiner Norwood: You mean by the market price—

By Mr. Leisure:

Q. You wanted the business?

A. Yes.

Examiner Norwood: You mean the price that your competitors charged?

The Witness: Yes, anybody's price. It wouldn't make any difference which competitor.

Examiner Norwood: You mean a competing price when you say "market price"?

The Witness: That is correct.

By Mr. Leisure:

Q. Now, Mr. Wooden asked you with regard to an exhibit dated November 10, 1937, on a price list in '35, wheth-

er or not you attempted to check all of the points. I think you said you did not check them all. Did you want the Examiner to understand that you checked enough points to be satisfied as to what the prices were, or what did you intend by your testimony?

A. Well, yes, I think my testimony showed that. We found a price at a sufficient number of points to convince us that our competition were not going to follow an 18-cent advance. I believe that is what you referred to.

Q. So that it would not be necessary to check every point?

8955 A. Well, you couldn't check every point very well.

Q. Well, this morning—

Examiner Norwood: You are on the look-out for those first quotations, are you?

The Witness: We certainly were.

By Mr. Leisure:

Q. This morning, Mr. Partridge, you said you used the Riverside price list at times to determine destination prices. At least you answered in the affirmative to that question. Would you also check with your dealers and with your men in the field to find whether that price was the market price before you used it?

A. We would have to, yes.

Q. Now, as to this figuring of and using of fractions in the figuring of freight, concerning the Examiner's question a few moments ago, did I understand you to say that in determining a mill net you might figure with fractions, freight fractions, in order to find out what your mill net was?

A. That is correct.

Q. That had nothing to do with your price?

A. No.

Q. In quoting a price you would meet the market price; is that correct?

A. That is correct.

Q. Now, Mr. Wooden just asked you whether or

8956 not in your northern territory in competing with California mills from Victorville, whether or not you met their destination prices. I think you said you aimed to.

A. Well, that is correct. We would have to meet the price as established by a Northern California mill if we were going into their territory or we couldn't sell any business there.

Q. And by that again you mean, and simply meant that you were attempting to sell at the price wherever you sold your cement in California; is that it?

A. That is correct.

Q. Do you know how these land-grant rates were arrived at in the beginning? By "arrived at" I mean how they originated.

A. Yes, I do. They were in some of the territories in the old land grants to the railroads. It was, in turn, provided that Government freight would move at a cer-

8957 tain percentage of the established commercial rates: In some instances 100 percent; some 50 percent; we have all of that information, including their land-grant map and method of calculating, and so forth, in our file.

Q. And that was a contract, was it not, between the carrier and the Government?

A. I believe so.

Q. And being a contract, each side would have to follow all of the facts, wouldn't they? I mean, the carrier would know the facts just the same as the Government would know the facts, if it was a contract, wouldn't they?

A. I would think so.

Q. Now, you testified that your mill nets varied on sales in Nevada and Arizona a few moments ago; is that correct?

A. They do.

Q. And in each case you are selling at a price made necessary to meet competition, are you not?

A. That is correct.

Q. Do they vary for other reasons other than

8958 freight rates; namely, differences in price?

A. Well, that would be the factor that causes them to vary, I would say, and the fact that the destination prices are different. I am thinking of the metropolitan Los Angeles area. Here we have a different mill net at a great many points within the territory where the delivered cost is exactly the same.

Q. So that would you say that the varying mill nets are due to the meeting of competition?

A. Exactly.

8959 Q. On the question of Colton and Crestmore: Do you base any prices on them as basing points? I mean, do you figure them as basing points in figuring your prices?

A. We do not because we don't use that method of compiling prices.

Q. So that you don't use either of those?

A. We do not, in making up our prices.

8960 Q. Mr. Partridge, you said that the cement is sometimes shipped in dealer trucks, I believe.

A. That is correct.

Q. Did you say that you pay the dealer the official rate for the use of the truck?

A. That is a fact.

Q. Now, will you explain to the Examiner what that means? Do you hire the dealer and his truck to take the cement from your mill to his destination?

A. Well, in effect that is actually what occurs. We bill him at the delivered—at his delivered cost and then allow him the established truck rate for that haul.

Q. That is, for this service you pay the dealer the official truck rate between the two points?

A. So that we are in effect hiring his truck.

Q. And is it true then the dealer gets the official truck rate even though his trucking cost is less than that amount?

A. Well, yes; we wouldn't have any knowledge of his actual cost.

Q. Then, as a matter of fact, would the dealer get any benefit of any saving he could make between his actual trucking cost and the official trucking rate?

A. He would.

8961 Q. Now, there is a telegram here, Exhibit 1272. I want to ask you to look at it, please, and tell the Examiner if the meeting referred to was concerning the freight rates from the inner and outer mills?

A. That is my recollection of it.

Q. Do you recall whether or not there were many meetings with railroad officials in the course of this controversy over freight rates?

A. Yes, there were a number of meetings with railroad—

Q. What was the controversy about?

A. Well, it is a matter of differentials in freight rates between the so-called inner and outer mills here, Riverside and Colton being grouped as inner mills. I am speaking of the way the Railroad Commission refers to it, and so forth, and Monolith and Victorville as the outer mills.

Q. And would the interest of your mill be the same or different from the interests of some of the other mills in this controversy?

A. Well, in this particular controversy our interests would be identical with Monolith, and Riverside and Colton would be thrown in the other group seeking the same differentiation over the outer mills.

Examiner Norwood: And give them advantage over you, too?

The Witness: It would, and that it what they
8962 were seeking and finally got.

By Mr. Leisure:

Q. But as far as meetings with the railroad officials were concerned, were they for the purpose of each group of mills securing advantage over the other mills?

A. We were fighting for a long-established one-cent differentiation, whereas the other mills were asking for a two-cent differentiation.

Redirect Examination by Mr. Wooden.

8964 Q. When you figure land-grant rates in connection with Government destination costs, do you not take the commercial destination price at the particular point and deduct the commercial rate and then add back the land-grant rate to that point? Is that the method you follow?

A. That is generally the method.

Q. Do you add back the land-grant rate with the idea of meeting the lowest combination destination price from any mill?

A. That is correct. Any mill that we would calculate would be a bidder in that they normally serve that trade territory.

Q. You use that mill, then, for a base for that purpose, do you not; to that extent?

A. We would in calculating the Government destination cost in that instance, yes.

Q. Some mills—or, is your mill on a land-grant road?

A. It depends upon the direction. There is a land-grant upon a part of the so-called high line of the Santa Fe in Arizona, and then going to—no, we are not on the land-grant section of railroad.

8965 Q. The land-grant road haul varies in length and sometimes there may be no land-grant rate haul at all for a certain mill; is that correct?

A. That is right.

Q. I believe you said no two men would figure land-grant rates alike.

A. That has been my observation.

Q. You have learned in the course of your observation that sometimes neither the Government nor the railroad involved will figure them out alike?

A. That is right.

Q. How much notice of price changes have you been accustomed to give when you give out changes in price?

8966 A. There is no uniform practice in so far as our company is concerned.

Q. Mr. Leisure asked you about checking prices at enough points to satisfy you that they were correct. Did you then assume that the prices at other points would correspond to the points you checked?

A. Well, that would be the natural assumption. As a matter of fact, we were convinced by the information we did develop that our competitor was not going to follow the proposed advance that we made. So we—

Q. I am not speaking of that particular instance,

8967 but of this general practice which I understood you to testify to, that you checked prices at enough destinations to satisfy you that they were correct, and what I am asking you is whether you then assumed that the prices at other points showed corresponding changes.

Mr. Leisure: Now, when he then assumed or not, I was asking the witness about a specific exhibit where their price was raised at the time, and his testimony was directed to that. If Counsel now wants to go into another subject, of course that is another matter, but the witness' testimony was directed to one thing, which he has explained to Counsel.

A. I think that would be a natural assumption.

By Mr. Wooden:

Q. I understood you to say that the only list other than your company's that was published and distributed to the trade was that of the Riverside Company.

A. At this time? I believe I did testify to that effect.

Q. Well, for instance, since 1935.

A. Well, no, I wouldn't—no, I think not. I think I corrected that and recalled that Monolith did have some prices which they withdrew or canceled. I don't recall

the exact date, but it was about the time of the enact-
8968 ment of the Robinson-Patman Act.

Q. Were there lists distributed and published to trade, or simply for the use of their own organizations?

A. Well, now, I don't know as to that.

Q. On this matter of mill nets, that is the only thing you have, isn't it, against which you can determine whether a particular sale involves a profit or a loss?

A. Yes, I judge so.

Q. You build up figures showing your gross sales every year, do you?

A. Well, that is done by the accounting department; yes, sir.

Q. That is a total of your mill net figures, isn't it?

A. It would be.

Q. Are you ever interested in building up a total showing the total of your delivered prices?

A. No, I think not.

Recross Examination by Mr. Leisure.

8969 Q. Mr. Partridge, you didn't mean to say that the gross sales of the company excluded the delivery cost, did you, just now?

A. No, I wasn't asked any questions to that effect, was I?

Mr. Leisure: Read that back to me, please.

(The record was read.)

The Witness: Well, that is incorrect. Naturally, if you had a total of the gross sales it wouldn't be a
8970 picture of the mill net.

Examiner Norwood: That total includes, then, the delivery expenses?

The Witness: The gross figures would, yes.

8972 GARNER A. BECKETT, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

I am president of the Riverside Cement Company
8973 and have been in that capacity about 2 years. Prior to that I was vice president and general manager. I was general manager for about eight years and vice

president and general manager for 3 or 4 years. The latter would run consecutively with the general managership.

John Treanor preceded me as president of Riverside. He served about eight years immediately preceding my term of office.

Riverside has a plant at Crestmore, California, near Riverside and a plant at Oro Grande between San
8974 Bernadino and Barstow. The Oro Grande plant has not operated since 1928. Crestmore is approximate-
56 miles east of the City of Los Angeles. The Crestmore plant was constructed by the predecessor Riverside Portland Cement Company in 1909, 1910, and 1911. The Oro Grande plant was constructed, I believe, about 1914 by an English company, the Golden State Portland Cement Company. Riverside purchased the stock and bonds of that company in about 1923.

The maximum annual capacity of Crestmore as about 3,000,000 barrels; Ora Grande, 1,500,000. These are
8975 approximate figures. They can be computed in a variety of ways. I comp te these figures as about twice the highest six months production, possibly four times the highest quarter. We have never produced that quantity of cement at either plant. The actual possible capacity annually at Crestmore would depend to some extent on the type of cement and the way in which the deliveries came. If everything came just right we could probably come pretty close to three million barrels. If we had some of these difficult cements to make or these new specifications more difficult to manufacture, it would cut capacity. Figuring the same proportion of low heat and standard as well as the higher early strength cement produced during 1937, our total maximum capacity at Crestmore an-
8976 nually would be about 2,750,000 to 3,000,000 barrels, more than 2,750,000 and probably less than 3,000,000. The actual production during 1937 in terms of barrelage at Crestmore I don't recall now; I think it was somewhere in the neighborhood of two million barrels, approximately. I would have to check that to be sure.

I don't know what percentage of that, roughly
8977 speaking, is represented by sales to the United States Government, including both intra and interstate, the City of Los Angeles, County of Los Angeles, and State of California on public works. As to how close an estimate,

I can give from my experience at this time as to what percentage of the two million barrels is represented in sales to those bodies, it would be a wild guess. I would be glad to look it up for you, including the Metropolitan Water District, for the year 1937.

Q. Within what shipping territory does your Crestmore mill ship, Mr. Beckett?

A. Southern California, Western Arizona.

Q. When you speak of Western Arizona, how far into Arizona do you describe as being western?

A. Well, the western half. I would say as far east
8978 as Phoenix and Tucson; a little beyond there, but negligible.

Q. Over both the Union Pacific and Santa Fe roads?

A. To Arizona?

Q. Yes.

A. The Union Pacific does not go to Arizona.

Q. Southern Pacific; over both the Southern Pacific and Santa Fe?

A. Yes, sir.

Q. Do you ship into Nevada?

A. Southern Nevada.

Q. What portion of the State is covered by your sales territory?

A. Practically nothing north of Las Vegas. It is pretty much desert, in there.

Q. What about the western portion of the State, south of Reno?

A. Western portion of the State south of Reno? That would be north of Los Vegas.

Q. That is true.

A. We don't ship there.

Q. You don't get up into that territory?

A. No, sir.

Q. How far north in Southern California do you ship?

A. About as far as San Luis Obispo and Bakersfield.

Q. What has been your practice in making known
8979 to your trade the prices that you quote them?

A. Well, our practice has been an open-price policy of publishing a price list and circulating it widely.

Q. On what basis were those prices quoted?

A. At what time?

Q. Well, at the present time.

A. At the present time we quote consumer prices at destination.

Q. What difference, if any, is there between those consumers' prices and the ones quoted dealers?

A. Well, you have all the lists; the supplement to the last list shows the dealer discount, as we call it.

Q. From the destination price is quoted consumers; is that correct?

A. From the respective destination prices quoted consumers.

Q. So your—

A. Depending upon the method of delivery. There is a corresponding dealer discount.

Q. So your price sheets to both dealers and consumers are on a destination basis in so far as quotations go; is that true?

A. Yes, sir.

Q. How often do you publish the price lists?

A. Well, at irregular times. There is no regular time of publication.

8980 Q. What prompts the publication of them when they are published, Mr. Beckett?

A. When we find one which in our opinion amounts to a change in the market price, we attempt—

Q. By whom?

A. In the market price.

Q. By whom?

A. By anyone.

Q. A change in the market price by anyone?

A. By anyone.

Examiner Norwood: Any competitor?

The Witness: Any competitor; yes, sir.

Mr. MacIntyre: Give these the next number.

(The documents referred to were thereupon marked for identification as Commission's Exhibits 1295-A to 1295-9-R, both inclusive.)

By Mr. MacIntyre:

Q. Mr. Beckett, I am handing you Commission's documents, which have been marked for identification as Commission's Exhibits 1295-A to 9-R, inclusive, and ask you to state what they are?

Examiner Norwood: Off the record.

(There was a discussion off the record.)

Mr. Works: It is rather difficult to hear that colloquy going on.

8981 Examiner Norwood: I heard it.

Mr. Works: If Your Honor heard it, it is fine.

Examiner Norwood: He was just explaining the arrangement of the sheets.

A. 1295-A appears to be the cover of one of our price lists, which is undated. "B"—

By Mr. MacIntyre:

Q. If you please, Mr. Beckett, rather than just describe each; will you please describe the group of price lists as to what price lists they are, and the dates on which they were published?

A. Are these the lists which we submitted recently pursuant to your request?

Q. They were the ones that were submitted by your Counsel to Mr. Wooden a few days ago. If you will just state what they are and the dates of each of the price lists, the effective dates, that will be all that will be necessary in the way of explanation at this time.

Examiner Norwood: Describe them generally.

The Witness: Well, here is one dated November 30th—January 30, 1935, marked "B"; May 2, 1934, marked "C"; November 1, 1934, marked "E"; November 1, 1934, marked "F."

Mr. Leisure: Those dates that he is reading, I am not clear whether that is the printing date or the date of
8982 issuance or the date they were to take effect.

The Witness: Well, it is the date that is in the upper righthand corner of the sheet.

Examiner Norwood: Off the record.

(There was a discussion off the record.)

Mr. MacIntyre: Let us just have him to state whether or not they are his price lists rather than calling off the dates, if he thinks it will confuse the record.

By Mr. MacIntyre:

Q. In other words, you can look over the papers and state what they are without calling off each page and designation. State whether or not they are your price lists?

Mr. Leisure: Are there any other papers there besides the price list, Mr. MacIntyre?

Mr. MacIntyre: Price list and supplements thereto.

Mr. Leisure: And supplements?

Mr. MacIntyre: Yes.

Mr. Leisure: It seems there is one group there that is bound together which he says should not be bound together.

The Witness: I am not sure that they should be bound together. I don't know.

There are letters here changing conditions. The
8983 conditions, of course, are regarded as part of the price?

Mr. MacIntyre: As part of the price, yes.

The Witness: Here is a sheet marked "DD," which I presume to be ours although it does not carry "Riverside Cement" on it as most of them do.

By Mr. MacIntyre:

Q. They were among the papers which you submitted the other day. Will you say those you submitted were your price lists?

A. Yes, sir.

Mr. Leisure: I want to save as much time as possible, but I don't see how this witness is going to identify a large basket full of papers there without referring to them, if he just says "these." We have no way of knowing in the record what he is talking about.

Examiner Norwood: I understood him to want him not to refer to each date on each one. I want him to look over there and see if he can identify them generally, and then if we have to go into it more particularly we will do so.

Mr. Leisure: I would like to have him refer to the exhibit numbers so we will know whether or not he has identified this entire group of exhibits.

Examiner Norwood: I want him to observe them but just identify them generally, if he can.

8984 The Witness: The same comment made respecting "DD" applies to one marked "TT."

By Mr. MacIntyre:

Q. Is there any doubt in your mind that that is or is not a part of your price lists, or supplements thereto?

A. If you say we furnished them to you, why, I am sure that they are part of ours, but they are not marked with "Riverside Cement Company" as the others are.

Mr. Works: Is there any doubt in your mind, Mr. MacIntyre, that these are the papers we furnished you?

Mr. MacIntyre: These are the papers that were furnished.

Mr. Works: Very well.

The Witness: The exhibit marked with "TTT" is a copy of a telegram changing prices.

Is this a memorandum that you wanted to mention to Mr. Works (indicating)?

Mr. MacIntyre: No, that isn't necessary.

The Witness: "Secure supplement"?

Mr. MacIntyre: That isn't necessary. It is off the record. It is not necessary to refer to that.

The Witness: I should like to comment that it appears that we have a dealer's list for Southern Nevada.

A moment ago I said we were quoting consumer
8985 prices with the dealer discount shown. Apparently April 4, 1938, which I think must be the last list for Southern Nevada.

By Mr. MacIntyre:

Q. And that is your list which you use for quoting dealers in Nevada?

A. Yes, sir.

Q. Do you find these papers, 1295-A to 1295-9-R being your price lists?

A. Yes, sir.

Examiner Norwood: Have you offered that in evidence?

Mr. MacIntyre: Not yet.

By Mr. MacIntyre:

Q. Mr. Beckett, you stated a few moments ago that when you quoted a price to a dealer or a consumer's price at any particular destination, you did so for the purpose of meeting market prices that you had found in that locality; is that true?

Mr. Works: Just a moment. I don't recall the witness so testifying.

Mr. MacIntyre: I did understand him to so testify. If I am incorrect I would like him to correct me.

A. I don't recall testifying as to consumer's prices.

By Mr. MacIntyre:

8986 Q. What about dealer's prices?

A. When we quote dealer prices we generally quote from our list. We endeavor to have our list reflect our opinion of the market price.

Q. How do you arrive at as to what the market price is?

A. Through our sales force and quotations we find in the field.

Q. Quotations of whom?
A. Any competitor.
Q. Competitors?
A. Any competitor; yes, sir.
Q. Who are your competitors, Mr. Beckett?
A. In Southern California?
Q. Yes, sir.
A. In Southern California the Southern Portland Cement Company, Monolith Portland Cement Company, Southwestern Portland Cement Company, the Santa Cruz Portland Cement Company, Pacific Portland Cement Company, and in so far as they sell to dealers on direct classifications, the Blue Diamond.
Q. Any others?
A. There probably are, from time to time. I don't think of any at the moment.
Q. Well, during 1935 did you have any other competitors?
A. 1935?
8987 Q. Yes, sir; than those you have named.
A. I don't recall any.
Q. So any market prices that you say you met in building up your price list would have been prices made by one of those, in your opinion, or quoted by one of those?
A. Well, they would be the prices that we found quoted in the market, and must have been quoted by those selling in the market.
Q. It couldn't have been quoted by anyone else than the competitors you have named?
A. We followed their prices, those which anyone else quoted.
Q. In your opinion, yere there any others that you found there than those you have just named as your competitors?
A. I don't recall any at the moment.
Q. Do you think you could recall if there had been any?
Mr. Leisure: I think we are getting a little far afield as to what could have happened.
I also want to interpose an objection here as to business done in California, being intrastate business, and we object to that testimony as being incompetent, irrelevant, and immaterial, and if I may have that objection to all of that line of testimony it will save my repeating it in the future.
Examiner Norwood: Certainly; I think we may
8988 have an agreement on that.

Mr. MacIntyre: These questions go not only to California business but Arizona and Nevada, as well.

The Witness: I thought you were talking about Southern California, sir.

Mr. MacIntyre: We will put questions so as to apply to all the territory which you serve.

By Mr. MacIntyre:

Q. What would be your answers to those questions?

A. I think if you are including Arizona business, in one of those years the Calaveras Company was active in Arizona, and also bidding in Southern California, and I think the Cowell Company. I forget Cowell, there, in Southern California, too; and Yosemite.

Q. Would that complete the list of competitors in that territory?

A. They complete all I can think of now.

Q. In other words, your printed price lists that you stated were made up on the basis of market prices quoted by your competitors would have been on the basis of one of those competitors you have named, then, in that territory; that is, Arizona and—

A. Yes, sir; and Southern California.

Q. As well as Nevada?

A. No, I think Colorado or Utah mills were quot-
8989 ing in Southern Nevada. I have never known of their coming any further south.

8990 Mr. MacIntyre: If Your Honor please, we now offer for the record the documents which have been marked for identification as Commission's Exhibits 1295-A to 1299-R, inclusive, the price lists identified by this witness as the Riverside lists.

Mr. Leisure: Subject to check—we hadn't finished checking those—and also subject to the objection that the price lists that pertain to Southern California come under our objection to intrastate business, we have no other objection.

Examiner Norwood: Received as marked. Objection overruled.

(COM. EX. 1295-A to 1295-9R was offered and received in evidence.)

By Mr. MacIntyre:

Q. Now, Mr. Beckett, with regard to price lists in Commission's Exhibit 1295, that is the Riverside price list

dated March 18, 1935, and that one dated June 1, 1935, effective June 2, 1935, will you please, by this afternoon, ascertain what competitors' price that you found in the particular market that caused you to issue those particular price lists?

A. What is the date of those lists?

Q. March 18, 1935, effective March 19, 1935, and
8991 the one published June 1, 1935, effective June 2, 1935.

Mr. Works: May we have the terminology of this question or request or order or whatever it is which just emanated from Counsel?

(Whereupon the question was read.)

Mr. Leisure: I submit, Your Honor, that that request covers hundreds of printed statements there.

It must be apparent to everyone that he couldn't cover all of those two price lists in the noon period unless it is going to be longer than we ordinarily have.

Mr. Works: I would suggest, if Mr. MacIntyre desires to examine the witness, he go ahead and do it.

Examiner Norwood: We are getting along very well.

Mr. Works: I don't know that we have any record that will divulge that information.

Examiner Norwood: He can state if he is unable to give that information; it is very simple to say so.

Mr. Works: That is why I suggest, Your Honor, that the examination proceed.

Examiner Norwood: Go ahead, Mr. MacIntyre.

Mr. MacIntyre: If your Honor please, I would like to state we would like at this time to adjourn for the noon hour, if it is the pleasure of the other parties concerned.

Examiner Norwood: Off the record.

8993 Afternoon Session, 2 P. M.

Examiner Norwood: The hearing will come to order. The witness will come to the stand.

By Mr. MacIntyre:

Q. Mr. Beckett, will you please state whether or not you were able to determine who, as a competitor, issued prices, or established market prices that you met with the issues of your price lists on March 18, 1935?

A. I have not been able to do so during the noon hour; no, sir.

Q. Or June 1, 1935?

A. No, sir.

Q. And you do not, on the basis of your independent recollection, find yourself able to state whose price, of course, you met on the occasion of issuing those new price lists?

A. No, sir. I think probably there were some filings. That was during the code period, if I recall.

Q. Did you ever—

A. I do have—

Mr. Works: Just a moment, please.

Examiner Norwood: Let him answer.

By Mr. MacIntyre:

Q. One of them is during the code period, March 18, 1935?

A. And I think probably you have a list of the filings during the code period. Our list is very incomplete.

8994 Q. Did you ever learn that you were the first one to have filed any particular price list with the code authority, or with the Cement Institute during the period previous to May 27, 1935?

Mr. Works: May we have that question, please?

Examiner Norwood: Reead the question.

(The question was read.)

Mr. Works: It is rather unintelligible, it seems to me, Your Honor.

Examiner Norwood: I think it is clear.

Do you understand the question?

The Witness: Not very well, sir.

Examiner Norwood: Did you ever file a new price? Were you ever the first to file a new price with the code authorities prior to May 27, 1935?

The Witness: I don't remember. I don't think we ever filed any price with the Cement Institute. I have no recollection of any.

By Mr. MacIntyre:

Q. You can't recall whether you ever filed a price list with the Trade Practice Committee of the Cement Institute during the last half of the period during the last of 1935?

A. We obeyed the instructions during the code.

Q. That is a period subsequent to the Schechter deci-

sion, I am talking about now. The N. R. A. code was
8995 out of effect. I am talking about the Trade Practice Committee.

A. I don't recall.

Q. You don't recall you ever filed a price list or any record with them?

A. I have no recollection at all.

Q. Mr. Beckett, if you found that a competitor had quoted a price to a dealer in a particular location, such as Flagstaff in Arizona, as was the case on the part of the Southwestern Portland Cement Company, November 10, 1937, what was your procedure in meeting that with respect to issuance of a new price list?

A. The price list, Mr. MacIntyre, as I have stated, reflects our opinion of the market price. We do not attempt to meet every little deviation from that by issuance of a new price list.

I think you will that the mass of papers that I identified make a kaledioscopic picture without doing that. Now, where we feel that there is a general lowering of the price we reflect it with a new price list.

Now, at times when we raise a price a different situation prevails. There have been relatively few of those times. I think only perhaps four in the last twelve or fourteen years when the price has come up. In those cases, based on our judgment of the price war that has been going on, and the raises that have generally
8996 followed a price war, we have raised the price to a price which we thought would be followed and would create a new market.

On the downward side, we have reflected in our price list what we felt were general drops. On the upward side, we have attempted, based on our knowledge of the business and belief that everybody was heartily sick of the prices, we had to put a price list out with the hope it would be followed.

Q. To that degree, in both the down as well as the upward swing of prices, you were price leaders; is that true?

A. I would say that my own definition of a price leader is that we could only be price leaders if we had followers.

8997 Q. In those cases where you were price leaders and did make those changes up and down you were price leaders, is that correct?

A. Where we went downward I don't know whether we were leaders or followers. We were attempting to reflect a market price we felt existed.

Where we went upward and attempted to make a new price, if we were followed, I assume we were price leaders.

Q. What was the last division in that direction you had led? What was the date of the last of those four you spoke of a minute ago?

A. Where we led?

Q. Yes.

A. There was a price raise of five cents a barrel we made in October, 1935.

Q. Will you state whether or not that was October 21, 1935?

A. No, sir. It was some time in October, as I recall, and I think that was generally followed.

We made another price raise in November or December of that year which, I think, was 30 cents a barrel, and it was not followed.

I would say that we were price leaders in October but probably not in November or December.

Q. But an attempt at a price leader in November, when you say you attempted to put it up 30 cents—

8998 A. We put a list out and based the price approximately 30 cents a barrel higher, as I recall it.

Q. What advance notice before effective dates, if any, did you specify in that list of November 18, 1935, of the 30 cent attempted increase, Mr. Beckett?

A. I don't know. The list would show.

Q. Did you maintain any part of that 30-cent increase at any particular destination out of all of your lists?

A. May I have that question?

(The question was read.)

The Witness: I don't quite get the meaning of "out of all your lists."

By Mr. MacIntyre:

Q. Was there any destination named of any one of all of the destinations named in your list? Did you maintain any or all of the 30-cent attempted increase?

A. We maintained a portion of the 30-cent increase, I think, at practically all destinations.

Q. That is, uniformly, the same amount of increase at all places?

A. I don't remember, Mr. MacIntyre. The list would show.

Q. Did you withdraw your 30-cent or cancel your attempted 30-cent increase at any destination where you did not have information that your competitors had failed to follow in that particular instance?

8999 A. Well, I don't imagine that we had information that our competitors had failed to follow at every single destination in the price list, because there are many of those destinations that don't use one car of cement in five years.

Q. What was the basis of prompting you, then, to withdraw or cancel out that attempted increase at those particular destinations?

A. We couldn't sell cement at that price. The market price was lower.

Q. If you didn't know that your competitors were not following you at that particular point, or whether they were following you or not, and if they had followed you, would you have been able to—

Mr. Works: I think it is rather difficult to answer that question. May we have it?

Examiner Norwood: Is Counsel speaking for the record?

Mr. Works: Yes.

Examiner Norwood: Please arise.

Mr. Works: I am very sorry.

May I have the question read, please?

(The question was read.)

Mr. MacIntyre: I will be glad to strike that question and reframe it.

By Mr. MacIntyre:

9000 Q. At particular destinations where you did not know that your competitors were following you, did you have any reason to believe that you could or could not get your 30-cent per barrel increase, in the light of competitive conditions?

A. Well, Mr. MacIntyre, at the places where cement was sold, and which therefore made the market at that time, we were not getting the 30-cent increase, and we inferred from that, that if cement were sold at other points, we would not get the 30-cent increase.

Q. In other words, at particular destinations you had

to act upon inference as to what competition was doing at other destinations; is that true?

A. If there was no cement sold there, there was no market made there.

Q. Well, I am talking now about destinations where cement was actually sold and where you did not have information as to competitors' prices as to whether they had followed you or not?

A. I misunderstood—I think we have misunderstood each other. I was talking about destinations where no cement was sold.

I think we had information as to where cement was being sold because our salesmen cover the market pretty thoroughly.

Q. In other words, you had information as to
9001 what your competitors were quoting at each of these hundreds of destinations in Southern California and Arizona?

A. Mr. MacIntyre, I didn't say that. I said we had information at the destinations at which a market price was being made by quotations.

Q. Well, did you know at each of those destinations as to whether or not your competitors were following this attempted 30-cents a barrel increase in price?

A. We knew that they generally were not doing so.

Q. Well, was there any particular destination that you did not know whether they were following you or whether they were not following you?

A. Well, Mr. MacIntyre, I can't answer that. I don't know.

Q. Well, did you attempt to find out that each and every one of these destinations as to whether or not your competitors had adopted the increase or had failed to adopt it?

A. We were satisfied that they had not adopted the increase.

Q. Well, did you get that satisfaction from an effort or a successful effort that they were actually following you at each destination or failing to follow you at each of the hundreds of destinations at which you sell?

A. Well, we satisfied ourselves with enough of
9002 the destinations to know that the list was not generally being followed.

Q. Well, the thing that I am attempting to get at

though, is whether you satisfied yourself with respect to each and everyone of them?

Examiner Norwood: Of course, he said he didn't. Didn't you say you didn't?

The Witness: I don't think so.

Mr. Leisure: He said he did not.

By Mr. MacIntyre:

Q. Well, then, we come back to the statement you made a few minutes ago that you inferred from what you did find at some of these destinations as to what your competitors were going to do at others, is that correct?

9003 A. We inferred that the list that we had put out was not being followed; that it was extinct.

Q. And would not be followed at certain destinations at which you had not as yet secured information?

A. We couldn't sell cement on that list; no, sir.

Q. Although you didn't know at the particular destinations as to whether or not you were being followed?

A. There may have been some that we didn't know, yes.

Q. But you nevertheless concluded that you couldn't sell cement there at the 30 cents per barrel increase?

A. We had no reason to believe that we could, no.

Q. Mr. Beckett, I am showing you documents which have been marked for identification as Commission's Exhibits 1203-FF and GG, and ask you to state whether or not you recognize that as a document taken from your files and furnished by you to Mr. Royal of the Commission's staff on the occasion of a visit paid to your office?

A. Well, I don't recognize it. We have, I believe, a list of this sort. If Mr. Royal says this is the list I gave him I take his word for it.

Q. That is his testimony.

Mr. MacIntyre: Your Honor, these are two documents that were identified by Mr. Royal in Chicago on June 21st as having been selected by him from the files of the Riverside Company and furnished to him by this witness,

9004 and, therefore, we offer them for the record at this time.

Examiner Norwood: What does this witness say about it?

Mr. MacIntyre: He says he doesn't—

The Witness: I don't recognize them, myself. I think we have a list of that general nature, but we may have furnished it to Mr. Royal. I don't remember.

Mr. Works: The witness stated that he is willing to take Mr. Royal's word for it, Your Honor.

Examiner Norwood: Any objection?

Mr. Leisure: Subject to check as to correctness. If they are correct, I have no objection.

Examiner Norwood: Yes.

The Witness: Can I see that list again, Mr. MacIntyre, please?

(Paperwriting were handed to the witness.)

The Witness: It doesn't seem to be dated, does it?

By Mr. MacIntyre:

Q. No, it carries no date.

Mr. MacIntyre: Does Your Honor care to see them?

Examiner Norwood: Any further objections to this price list?

Have you seen them, Mr. Zimmerman?

Examiner Norwood: They are received as marked, subject to check.

9005 (COM. EX. 1203-FF and 1203-GG was offered and received in evidence.)

By Mr. MacIntyre:

Q. Mr. Beckett, I notice that in this list it is entitled, "Price List Mailing List," and I also notice alongside the name of "T. K. Partridge, Southwestern Portland Cement Company," the numerals "15." Will you please state what that means?

A. I don't know.

Q. Would it mean that you had mailed, or had Mr. Partridge on the list for mailing to him 15 copies of your price list?

A. I don't know.

Q. Would you say the same thing as to Mr. John Dartt of California Portland Cement Company?

A. As to all those numbers.

Q. You have no independent recollection that they represent numbers of copies of particular price lists that you had them listed for?

A. No recollection at all.

Q. Excluding your dealers as those that are on your mailing list for receiving price lists, will you say that this represents approximately the other parties to whom your price lists are mailed as of today?

A. Well, I can't answer that. I don't know when this list was—

9006 Q. I am talking about now, as of today. Do you consider that those parties are on your present list; the one for 1938?

A. I presume we have a list for 1938, and it is a very easy list to get on.

Q. Do you recognize the name of Mr. Partridge on this, and consider he would also be on the one you have at the office for present mailings?

A. I wouldn't know about Mr. Partridge, but I would think we would send one to the Southwestern Portland Cement Company.

Q. What about Southwestern Portland Cement Company?

A. I would think we would send one to them.

Q. The Monolith Portland Cement Company?

A. I would think we would send one to them.

Q. The Santa Cruz?

A. Same answer.

Q. Henry Cowell Lime & Cement Company?

A. The same as to all of them. I would expect we sent lists to all of them.

Q. You would consider they would be on the present list just as they were on this older list here?

A. I would consider the companies would. Perhaps not in the same form or order.

Q. Would you say you are sending today more than one copy to Mr. Partridge, or to the Southwestern Portland Cement Company?

9007 A. I don't know.

Q. You don't know what the practice is of your company as to how many copies each of these competitors of yours get, as to your lists?

A. No, sir; I do not.

Q. Showing you a document which has been marked for identification Commission's Exhibit 1203-H, which Mr. Royal, on June 21st, testified you had furnished him after he had selected it from the Riverside Cement Company's files. Will you please state whether or not you recognize that, Mr. Beckett?

A. It looks like a photostat of one of our file sheets. I see our name printed up in the corner; July 29, 1930.

Q. Any other identifying marks on there that would lead you to conclude that it came from your files?

Mr. Leisure: What is that number again?

The Witness: This number is 1203-H, and is a letter written to Mr. George of the Cowell Company in 1930 enclosing a price list saying, "You will note that the list will be the same to all the dealers in a very large territory regardless of variations in freight rates. You will also see"—

Mr. Leisure: Don't read it, please. It is not in evidence.

The Witness: All right.

A. Yes, I think that is one of our letters. It has 9008 the same markings in the upper righthand corner.

By Mr. MacIntyre:

Q. You are willing to accept it?

A. Yes.

Mr. MacIntyre: I now offer it for the record, Your Honor.

Mr. Leisure: May I ask the witness a question?

Examiner Norwood: Certainly.

Mr. Leisure: Are you reasonably confident that this came from your office?

The Witness: It bears on the—it looks like a reproduction of one of the sheets which we used for file sheets. The upper righthand corner and lefthand corner look like one of our sheets.

Mr. Leisure: And the body of it. Did you read that?

The Witness: Most of it.

Mr. Leisure: Do you think it came from your office?

The Witness: It may have. The initials "NM" are the initials of Mr. Norman Macbeth. If Mr. Royal says it is one he picked from the files and gave him, I—

Mr. Leisure: We have no objection to it.

(COM. EX. 1203-H was offered and received in 9009 evidence.)

By Mr. MacIntyre:

Q. Mr. Beckett, I now show you documents which have been marked for identification as Commission's Exhibits 1203-F, E, D, KK, and LL, and ask you to state whether or not you can recognize those as photostats of documents that you furnished to Mr. Royal after he had made selections from your file?

A. I have no recollection of them, but—

Q. Does the receipt stamp on there appear to be that of the Riverside Cement Company?

A. Yes, that is a receipt stamp of the Riverside Cement Company on the upper lefthand corner on the letter of the Yosemite Portland Cement Company to Mr. Leonard.

Q. That is 1203-F?

A. 1203-F; yes, sir. October 22, 1931.

Q. Do you recognize it as a letter that was furnished Mr. Royal from your files?

A. I do not recall it; no, sir; but I presume it is. I have no recollection of any of these, but—

Q. What about the receipt stamps on the others?

A. There is no receipt stamp on 1203-E, which again appears to have been written on one of our second sheets.

Q. As an outgoing letter from your office?

A. The second sheet.

1203-D—I don't see any receipt stamp on that.

9010 That letter, from the Yosemite Portland, again, addressed to Mr. Leonard, November 2, 1931.

Q. You don't recall furnishing this to Mr. Royal; that is, the original of which this is a photostat?

A. It says here, "Obtained from Mr. Beckett, 1932."

Q. That is someone else's statement. I am asking now for your independent recollection; whether or not you furnished this, or the original of which this is a photostat, to Mr. Royal on the occasion of his visit in 1932 at your office?

A. It is six years ago. I can't recall the individual letter.

Q. What about 1203-LL and 1203-KK? Does that bear the receipt stamp of the Riverside Cement Company?

A. It bears a receipt stamp of October 23 or 26, 1931.

Q. Is that the receipt stamp of your company?

A. I can't make out the initials on this letter. It says, "Received" and then—I can't make out what is below that. It is addressed to Mr. Leonard by Yosemite Portland.

Q. Can you tell whose handwriting the words "Return to" are in on the first sheet? Does that appear to be yours or Mr. Macbeth's or Mr. Leonard's?

A. It looks more like mine than it does Macbeth's.

Q. Does it appear to be in your handwriting?

A. It might be.

Q. Well, do you recognize it as your handwriting?

9011 A. I wouldn't be sure about it. There is very little of it there.

Mr. MacIntyre: Your Honor, Mr. Royal identified these documents as having been selected by him as photostats of documents from the files of the Riverside Portland Cement Company, February 5, 1932, and which were furnished to him by the Witness Beckett, and on the basis of that identification we offer these for the record at this time.

Mr. Leisure: In order to keep the record straight, may I ask the witness a question about these exhibits?

Examiner Norwood: Certainly.

Mr. Leisure: As I understand it, you were interviewed at that time by Mr. Royal and he selected certain exhibits that he wanted; is that right?

The Witness: By Mr. Royal and another gentleman; yes, sir; and they selected certain exhibits.

Mr. Leisure: Your Honor, here are three letters that have been written by Mr. Holmes, sales manager of the Yosemite Portland Cement Company back in 1931. I want to object to these exhibits as incompetent, irrelevant, and immaterial; no proper basis having been laid, and upon the further ground Mr. Holmes was on the witness stand at San Francisco, and if letters written by Mr. Holmes were to be offered in this proceeding I feel
9012 it was incumbent upon Counsel to offer them while the witness was on the stand who wrote them so that we could have a proper hearing and have proper explanations made. I want to object to them being offered at this time on that further ground.

9013 Mr. MacIntyre: If Your Honor please, the best information we have and the best the record shows is the fact that this witness, the witness Beckett, had these documents, or the originals of which these are photostats, in his possession subsequent to that of Mr. Holmes.

It is possible that Mr. Holmes could have identified some markings on these exhibits but if the period since the date on which Mr. Beckett furnished them to Mr. Royal is so great that he can't recall the letters, although he handed them to Mr. Royal, it would seem, therefore, it would be less probably that Mr. Holmes, who previous thereto wrote them to Mr. Beckett, or Mr. Leonard, could have recalled the letter.

Mr. Leisure: I think, of course, Mr. Holmes would have been able to identify his own signature. The signature is attached to three letters.

The real point of my objection is, Your Honor, that this is a hearing, and when the exhibits go in, if the witness

who wrote the exhibits is available, I think there is a duty on the part of the Commission to present the exhibits while that witness is on the stand, rather than waiting until we get away from that section of the country and then present them through another witness. We can't have a hearing on any other basis.

Examiner Norwood: Does the Counsel object to the 9014 identification?

Mr. Leisure: Yes, that was included in my objection.

Mr. Works: No proper foundation laid for any of them.

Mr. MacIntyre: If Your Honor please, an examination of these would show you that they were laid to the exchange of price lists, I mean, the competitors, the Riverside Company and its competitors, in line with testimony and other documentary evidence already in the record, and, therefore, the materiality and relevancy is clear, and we contend that the identification of the Commission's representative, Mr. Royal, is sufficient for the admission of them in evidence.

In addition to that, the identification has been somewhat supplemented, although not as much as we had hoped, by the witness now on the stand.

Examiner Norwood: Well, I shall look at the exhibits, if I may see them, when you are through. Are other Counsel looking at them?

Mr. Leisure: Of course, our contention is that the contents of the documents cannot prove them; the documents cannot prove themselves.

Examiner Norwood: These documents have been identified as coming from the files of the Respondents, 9015 and where it is clear as to their purport and to whom they are addressed, and to whom they were sent, and who sent them out, or wrote them, we have considered that sufficient identification that we may assume or infer that they are what they purport to be, unless something else appears to the contrary.

Off the record.

(There was a discussion off the record.)

Mr. Leisure: There is no showing in the record, Your Honor, as to how these letters got in the file.

They are not identified as to having been written by any particular author. The record is entirely barren of any proper foundation.

Mr. MacIntyre: If Your Honor please, the witness on the stand, who furnished these to the representative of the Commission, if he can throw any light on how these particular letters got in his file before he furnished them to the Commission, or before that Commission representative selected them from the files, we would like to have him do so. Of course, that is one reason for my offering them at this time, since he took them from his own files. We would like to have him tell us just how—

Mr. Leisure: That is the point of my questioning.

That was the point I questioned the witness about,
9016 whether he did take them from the file. The evidence is that these men selected them from the files themselves. That was the point of my asking the question of the witness. There is no testimony so far in the record that this witness ever saw these documents before.

Examiner Norwood: Well, the evidence is that these papers came from the files, is it not?

Mr. Leisure: Selected by the—

Mr. Works: Were selected—

Mr. Leisure:—by the investigator.

Mr. Works:—were selected from the files, Your Honor. Your Honor is reading the transcript now, I take it?

Examiner Norwood: I am referring to the transcript. Off the record.

(There was a discussion off the record.)

Examiner Norwood: The objections are overruled and the exhibits are received as marked.

(COM. EX. 1203-D, 1203-E, 1203-F, 1203-KK, and 1203-LL was offered and received in evidence.)

By Mr. MacIntyre:

9017 Q. Mr. Beckett, I will now hand you documents which are marked for identification as Commission's Exhibits 1203-M, N, O, P, Q, R, and T, and ask you to state whether or not you can recognize those as photostats of documents you furnished to Mr. Royal on the occasion of his visit to your office in 1932?

9018 A. 1203—is that "R"?

Q. That is "R."

A. —appears to be a letter written in 1930—a copy of a letter written in 1930, and the sheets look like one of our second sheets.

Q. Do you recognize it as a file copy of an outgoing letter from your offices,—as a photostat of a file copy?

A. Well, Mr. MacIntyre, I want to be as helpful as I can, but I can't remember what letters Mr. Royal took eight years ago, and six years ago. I know we pawed through letters, and what he took I don't remember.

Q. You did furnish him—

A. We furnished him letters.

Q. —a group of letters that he selected from your files?

A. I don't remember which is which. This 1203-O, 1203-N, appear to be on the Riverside Cement Company's letterhead, and they appear to be a circular letter to dealers.

Q. Do they have the file stamp of the Riverside Portland Cement Company?

A. They have the file stamp of Riverside Cement Company, and they are marked "Permanent File," which would lead me to believe that those are part of our price lists,—using price lists in the terms of—including all of the terms and conditions, and setting forth the opinion of our attorneys as to our right to establish minimum re-sale contracts with dealers. I think I can identify that, the letter 9019 of January 15, 1930, being Exhibit 1203—is that "O" or "P"? It was "O."

Q. It is "P."

A. Now it is marked "P." I can similarly identify that. These letters from the Gibbs Lumber Company—

Q. That is 1203-T and 1203-M.

A. That is 1203-T and 1203-M, addressed to Mr. Leonard and Mr. Treanor, respectively, I don't recall.

Q. Is there any handwriting on those letters that you can recognize?

A. There is not on that one.

Q. What about 1203-T, does that bear the file stamp of the Riverside Cement Company?

A. It looks like it. And 1203—.

Q. That is "M."

A. "M," that looks like Mr. Treanor's writing, marking it for Mr. Macbeth and Mr. Leonard.

Q. It appears to be in Mr. Treanor's handwriting?

A. It looks like it.

Q. In the name of Macbeth and Leonard?

A. Yes, sir.

These other two, I am sorry.

Mr. MacIntyre: Well, Your Honor, on the basis of the identification of these photostats by Mr. Royal on June 21,

1938, and as further supplemented by the witness
9020 at this time, we offer these for the record.

Examiner Norwood: Any objections?

Mr. Leisure: Yes, Your Honor. Here is a group of exhibits being offered, Exhibits 1203-R and 1203-Q, which bear no signatures. There is no showing as to who wrote the letters; no proper foundation of any kind has been laid for their offer or introduction into evidence.

Here are some more letters, 1203-M, 1203-T, written by a gentleman by the name of Gibbs or some Gibbs Lumber Company. I submit anything Mr. Gibbs may have to say, while it may be interesting, it is not material or revelant as far as the issues in this case are concerned, and it is not binding upon any of these Respondents. These are all dated back in 1930, and are so remote that they are not material or relevant today. So that we object to all of these exhibits as being incompetent, irrelevant, and immaterial, and on the further ground that no proper basis has been laid for their introduction in evidence.

Mr. Zimmerman: May I ask, is it agreed, Mr. MacIntyre, that the Respondent Riverside did not become a member of the Respondent Institute until 1933?

Mr. MacIntyre: No, I cannot say that I agree to such a premise as that on the part of Mr. Zimmerman. We will have to wait until the proof is in in this case and then we will agree as to what the proof shows.

9021 Mr. Zimmerman: The record already shows, does it not, when they joined the Institute?

Mr. MacIntyre: I don't know whether it does or not.

Mr. Zimmerman: Well, all right, we won't ask you to agree to anything that is so self-evident, but I do want to point out that all of these documents antedate the membership in the Institute of the Respondent Riverside by some three years, or approximately that time. They couldn't possibly, therefore, be, on the state of the record as it now stands, in any way binding upon any member of the Institute, and I say that only because of this rather far-fetched theory that anybody who ever afterwards belonged to the Institute becomes thereby bound with every act of any member of the Institute. I do think that is far-fetched, but, certainly, that could not be applied to these exhibits. They too far antedate, and in no wise are related to the membership of the Respondent Riverside in the Institute.

Examiner Norwood: Any further objections?

Mr. Works: The standing intrastate objection still obtains, I take it.

Examiner Norwood: Any further objection?

Mr. MacIntyre: If Your Honor please, I call attention to the fact that these two letters that Mr. Leisure has referred to as being written by an official of the Gibbs
9022 Lumber Company has been identified by the present witness as appearing on at least one sheet of the two letters, the handwriting of a former president of the Riverside Company. And you will find from a reading of the letters that they deal with negotiations and considerations on the part of both the Riverside Company and the Gibbs Company as to what price lists and materials of sale that were to be issued by the Riverside Company on a re-sale price maintenance plan.

Examiner Norwood: Well, I should like to read these before ruling, but you can proceed, however. I will just withhold the ruling until I can examine them carefully.

Mr. MacIntyre: Mark this, please.

(The document referred to was thereupon marked for identification as Commission's Exhibit 1296.)

By Mr. MacIntyre:

Q. Mr. Beckett, I show you a document which has been marked for identification as Commission's Exhibit 1296, and ask you to state whether or not you can recall and recognize it as a copy of a letter that you furnished to Mr. Casto of the Commission's staff on December 26, 1936?

A. Yes, I have a recollection of discussing this letter with Mr. Casto,—this telegram with Mr. Casto at the time. One of our customers was bidding in a territory in which we did not ship. We wired a cement company in that
9023 territory and asked them to quote us a price to reflect to our customer.

Q. So that you would know what to quote to your customer in that territory?

A. No, we were not selling in that territory.

Q. That is, regularly.

A. At all; ever.

Q. Did you sell one customer at Roseburg?

A. No.

Q. Did you have any idea of quoting him?

A. No, it was purely a matter of courtesy of telling a man what the price was in an area we hadn't marketed

cement in in the time I have been with the company. If you look up the freight rate from Crestmore to Oregon it is more than the price quoted there.

Q. But you were more or less interested in obtaining from the Oregon Cement Company the price that was quoted there at that time?

A. One of our customers wanted to know what the price was up there, and we wired a cement company to find out.

Q. And that is the reply?

A. That is the reply.

Mr. Zimmerman: Aren't you going to offer that in evidence, Mr. MacIntyre?

Examiner Norwood: How was that marked?

Mr. MacIntyre: 1296.

9024 By Mr. MacIntyre:

Q. We would like to ask at this time, Mr. Beckett, whether or not Mr. Leonard, your sales manager, is the man in your organization who prepares price lists for publication?

A. I think that he probably assigns the work to the clerical staff.

Q. And it is handled under his direct supervision, to the best of your knowledge? –

A. Well, generally under the sales manager and manager and president. We generally discuss the lists before they are published.

Q. Are you acquainted with the method of figuring prices that are quoted in the price lists? That is, are you acquainted as to whether or not they are zone prices, arbitrary prices, or basing-point prices?

A. I have a general familiarity with it from time to time.

Q. Well, are you sufficiently acquainted with the making of the prices that are quoted in your price lists at the time they are made up to definitely know what method is used in figuring prices quoted at any particular destination?

A. You mean at the present time?

Q. Well, at the present time as well as the past years.

A. Well, I recall the present price list but I don't know that I would historically recall the events leading up to lists ten years gone by.

9025 Q. You are of the opinion Mr. Leonard would probably be better qualified to recall the details of the history of price changes than you would?

A. I don't know whether he would be better qualified or not. I would be glad to do what I can to answer questions, or you can ask him.

Mr. MacIntyre: That will be all for Mr. Beckett at this time, subject to a recall.

Examiner Norwood: Cross-examine him.

Mr. MacIntyre: We have finished with the witness so far as this particular calling to the stand is concerned.

Mr. Leisure: I don't wish to cross-examine until he finishes with the witness.

Examiner Norwood: I think Counsel means he may recall him to get this special information he has asked for, and if he is recalled he will be confined to that subject, so Counsel may proceed and cross-examine him on these other matters.

Mr. Leisure: May I see 1296 before the witness leaves the stand, Mr. MacIntyre? The exhibit that was marked 1296 that the witness was just interrogated about?

(The document was handed to Mr. Leisure.)

Mr. Leisure: Mr. MacIntyre, do you intend to
9026 offer now?

Mr. MacIntyre: No, we do not.

Mr. Leisure: We reserve the right, Your Honor, to offer it in this case.

No questions.

The Witness: Before I leave the stand, Mr. MacIntyre—

Mr. MacIntyre: I didn't understand.

The Witness: Before I leave the stand, you asked me to get a percentage of business during 1937?

Mr. MacIntyre: Yes, sir.

The Witness: It is rather difficult to compile that but I find the figures were compiled for the first seven months of 1937 and they are 60 percent to general commercial business, and about 40 percent to the United States Government, the metropolitan water district, States, counties, and cities, and various political subdivisions a great portion of which was sold f. o. b. mill at prices at or below the dealers' cost.

9027 By Mr. MacIntyre:

Q. When you speak of f.o.b. mill, there, Mr. Beckett, do you mean it was on the basis of the government destination cost where land grant rates had been figured from the mill on the basis of a mill price plus land grant rates?

A. I mean f.o.b. cars at mill.

Q. Independent of any consideration as to application of a land grant rate or other freight rates?

A. In many cases, yes.

Q. It was not necessary for you in those instances, then, to know where the government was going to use that cement or as to what prices you had to meet at any point of consumption, was it? That is, if you quoted on mill price irrespective of where the cement was to be used or the figuring of freight rates to the point of consumption?

A. I think as a general thing the government has announced that in its call for bids.

Q. Was your price given due consideration of the application of land grant rates, or was it made irrespective and independent of the land grant rates?

A. Both ways.

Q. In other words, there were some instances in which you didn't have to figure the application of any freight rate from your mill to the point of consumption in order for you to meet competition when you gave them the

9028 pure and true f.o.b. mill?

A. Some cases we were making possible low prices to the government.

Q. Irrespective of whether it was to be used or how it was to be transported to their particular point of use?

Mr. Davis: I object on the ground it assumes a state of fact that is not in evidence. There were no bids called for on that basis.

Examiner Norwood: Read the question.

Mr. MacIntyre: I think I can clear up the gentleman's mind as to what the record does show.

The record does show that the witness just stated that he had made f.o.b. mill prices without consideration of the application of land grant rates or other freight rates so from that we consider that he did so without respect as to where the cement was going, if he didn't consider anything at all as to the freight rates that were involved.

Mr. Davis: The question assumed instances where there were invitations for bids without disclosing the destinations and that is the reason I objected to it that it assumed a state of facts not in evidence.

Mr. Works: May we have the question read?

Examiner Norwood: Read the question.

9029 (The last question was read.)

A. I think we are a little at cross purposes because you are assuming that land grant rates govern, but

it has been the custom of the railroads here to make special municipal rates which have been lower than the land grant rates and, in some cases, those rates have been made after the bids were in.

By Mr. MacIntyre:

Q. Did that affect your ability to meet competition at the point of use?

A. It certainly did. We didn't meet competition at the point of use if the rates were changed after the bids were in.

I have in mind the bid to Boulder Dam back in the period in which you are talking about where the municipal rates were changed following the bidding and we, on subsequent bidding bid f.o.b. trucks, Bounder Dam. The bid was not awarded, but we were very resentful that the—

Q. What we are talking about now are the bids you put in f.o.b. mill in which you said you did, as in those instances in which you said you did so without any consideration whatever of application of land grant rates or other freight rates. Did you quote the price in that way so as to permit you to meet competition without knowing what the land grant rates or other freight rates would be applied?

9030 Mr. Zimmerman: My recollection of the record is not in agreement with the statement made by Mr. MacIntyre.

Mr. Works: I was going to ask that the record be read and see if Mr. Beckett's statement has been properly stated by Mr. MacIntyre.

Mr. MacIntyre: I would be glad to restate the question.

Examiner Norwood: I wish Counsel would restate the question.

By Mr. MacIntyre:

Q. Has your company at any time, Mr. Beckett, quoted an f.o.b. mill price on this 40 per cent of public bid, that you are talking about, of the cement shipped pursuant of public bid, quoted an f.o.b. price without consideration of the application of land grant rates or other freight rates which would be involved in the shipments from your mill as well as those from your competitors' mills?

A. We have done so on the Boulder Dam bids and Metropolitan Water District bids and other government bids.

Q. Did you find you were able to make competitive bids in those instances?

A. I don't know what you mean "competitive bids." Sometimes we were low and sometimes we were not.

Q. I will let you describe and explain what you understand by the term "competitive bid."

9031 Mr. Leisure: May we also have an explanation as to what is meant or what the witness thinks the attorney for the Commission means when he says, "without reference?"

Examiner Norwood: Were bids so arrived at found to be identical with any other bid?

The Witness: I have just said sometimes they were low and sometimes they were high and were not identical.

9032 Examiner Norwood: Not identical. Thank you.

The Witness: I think if you will refer, Mr. MacIntyre, to some of the bids on the Boulder Dam you will see what I am trying to express. The bids were not identical. Somebody else's was lower than we were and higher than we were, and so on.

By Mr. MacIntyre:

Q. Those were in the cases where you bid f.o.b. mill prices without applying a Government destination cost based on mill price; is that true?

A. We bid f.o.b. mill. We knew where the cement was going; yes, sir.

Q. In other words, you didn't bid a Government destination cost that would equalize freight with your competitors at Boulder Dam?

A. Not in those particular cases; no, sir.

Q. And that resulted in different prices at Boulder Dam?

A. I believe the bids will so show.

Mr. MacIntyre: That is all at this time.

Examiner Norwood: Call your next witness.

Mr. Leisure: Does the record show the witness discharged?

Examiner Norwood: The witness is discharged, yes.

(Witness excused.)

9033 Mr. MacIntyre: I will call Mr. Leonard as the next witness.

Examiner Norwood: Have you a subpoena, Mr. Leonard?

(A paperwriting was handed to the Examiner.)

WARREN H. LEONARD, called as a witnes son behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

I am general manager of the Riverside Cement Company and have been so engaged about two years. I was a sales manager for the same company for about 10 years immediately preceding my present term of office as
9034 general manager. My duties as salesmanager and as general manager had to do with the making or filing of prices that were quoted by my company to dealers and to the trade generally. The nature of the work that I perform in that connection consisted of conferences with the president of the company and lately with the sales manager and we have issued price lists. When I was sales manager my function with respect to the making up of the price lists or determining what price would be quoted in the price lists that were published by my company was that in conference with the then general manager and the president we got out price lists. My function in that connection after the conference was to see that the price lists were printed and distributed in accordance with their instructions.

Q. Well, generally, what were the instructions that were given you during the course of the conferences you have described?

A. I couldn't answer that generally. Specifically,—

Q. Well, in any particular instance that you can now call to mind, what were the instructions; that is,
9035 where your company assumed the leadership such as has been described by Mr. Beckett in advancing prices, in any one of these four instances that he mentioned? What was your function there?

A. My function was to issue a price list in accordance with the instructions and decision of the management.

Q. What were the instructions of the general manager at that time?

A. It was in advance in price, as you mentioned, they would simply instruct me to get out a price list at whatever basis they had decided that it should be issued on.

Q. Well, in the case where the advance was—that was

30 cents, the last instance of the four that he mentioned was the attempted 30 cents per barrel advance, wasn't that right?

Mr. Works: You are now referring to the December, 1935, situation?

Mr. MacIntyre: That is correct.

A. Well, in November—I think it was November, 1935.

By Mr. MacIntyre:

Q. November, 1935?

A. I was instructed to send out notice that our prices were increased 30 cents a barrel.

Q. At all destinations?

A. As I recall, at all destinations.

Q. Had you previously supplied your general manager or your president with any information concern-
9036 ing prices that you had found as quoted by your competitors at the destinations that you were to send out this new list raising the prices, at any of the destinations?

A. I don't understand that question.

Q. Had you previously informed your general manager or president concerning competitive prices at any of these destinations to which you were to send prices advancing the same 30 cents per barrel?

A. Well, do you mean had I told them what the prices were in existence prior to this advance at any—

Q. At the time just previous to the advance, had you informed them what your competitors were quoting at those particular destinations, or at all destinations?

A. Goodness, I don't remember whether I had or not.

Q. Did you inform them after you had sent out the notices what the competitors were quoting at the destinations at which you had raised the price 30 cents per barrel?

A. Generally, I tried to keep the management informed of the market prices at any and all destinations I had any knowledge of, or could get any knowledge of.

Q. Did you secure information as to whether or not your competitors were following you on this 30-cent advance at all destinations at which you quoted?

Mr. Works: You refer now to the period after the list was put out, I take it?

9037 Mr. MacIntyre: After the list was put out.

Mr. Davis: Became effective?

Mr. Works: May your question be amended to that extent?

A. I told them that the advance we had intended to put out was not being followed by all of the people selling cement in the market.

By Mr. MacIntyre:

Q. On what information was your statement in that connection based on?

A. On information that our salesmen brought in, that our dealers brought in, that our contractors gave us, or anyone else in the market.

Q. Did you get such information from each and every destination at which you had quoted?

A. I couldn't remember that.

Q. What is your recollection on it?

A. My recollection is that the price was not one at which we could sell cement. The market price was lower.

Examiner Norwood: Did you get any information whatever direct from any competitors with regard to following this price?

The Witness: No.

By Mr. MacIntyre:

Q. The list which you had received from your 9038 competitors, such as the Santa Cruz list, did it disclose whether or not they were following the prices at all these destinations, or whether they were not following them, the price of your 30 cents per barrel advance?

A. I don't remember of seeing a Santa Cruz list for that period.

Q. What about the Southwestern Portland Cement Company?

A. Well, I don't remember seeing a Southwestern list for that period.

Q. Did you receive the price lists of the Southwestern Portland Cement Company at the times when they made price changes? You do, do you not?

A. I think so.

Q. And you didn't receive one from them indicating that they were making the price change that you had made at that time?

A. I didn't say that. I said that I didn't remember that particular occasion, or whether I saw their list.

Q. Do you know whether or not you received a price list of the Southwestern showing that they had advanced the price 30 cents per barrel to meet the increase that you had made?

A. No, I do not remember.

Q. In the absence of receiving a price list indicating an advance to meet the advance that you had made, you would assume that they had decided to remain on the old price list that they had previously sent you, isn't that true?

9039 A. I never assume anything about any competitors' prices.

Q. Well, do you find that the Southwestern Portland Cement Company sells at any of its destinations to which it ships cement at prices different from those it quotes in its price list?

A. When? When do you mean, Mr. MacIntyre?

Q. Generally.

A. Well, the question is awfully difficult to answer.

Q. Well, do you know—

Examiner Norwood: Did you ever find that they had done that?

The Witness: Why, I suppose that we have found that any and all competitors have at times sold at prices different from those on the list for perhaps a short period or for perhaps a long period.

Examiner Norwood: Well, did you ever find out that they did?

The Witness: It depends upon what you mean by "find out."

Examiner Norwood: Obtain information.

The Witness: You get information from your dealers and your customers claiming that your competitors are selling at a different price than their price list, and you can believe it or not.

9040 As to the documents which you show me and which have been marked for identification as Commission's Exhibits 1203-M, N, O, P, Q, R and T, I don't recall ever having seen 1203-R before. I was our sales manager at that time but those are not my initials. As Mr. Beckett told you, "N.M." are the initials of Norman Macbeth. He is a vice president now. He does not have anything to do at all with the sales department announcing the prices,

9042 1203-P looks like an announcement that we might

9044 have sent out. I think we did send out a letter such as this for establishing a zone price for San Diego, as I recall. There have been a lot of these announcements sent out. I can't specifically recall on January 15, 1930, we sent out such an announcement, but this looks like
9045 one. As to whether or not we did establish on that date, January 15, 1930, certain zone prices, I don't recall any particular date. I would be inclined to think we probably did, from that document. It does not particularly refresh my memory in that respect. There have been a good many of these things.

9046 As to whether I recognize Commission's Exhibit 971-34-P as a map disclosing zone prices and other prices that prevailed in Southern California on cement at particular times and as a map that I sent Professors Clark and Burns in 1935, I remember sending a map to Clark and Burns in connection with that questionnaire, but I don't particularly remember having sent this map.

9047 This is not my signature. I do not recognize that handwriting as of anyone in our organization. I do not recall having had a map such as that made up to send Professors Clark and Burns, outlining zone territories. This was produced as out of our files but I can't recall ever having seen that map.

9048 (Discussion, during the course of which the document referred to was marked Commission's Exhibit No. 1297 for identification.)

I do recognize the document which has been marked for identification Commission's Exhibit 1297. It is a zone map dated April, 1936, and has "Riverside Portland Cement Company" on it. It is a copy of a zone map which we undoubtedly gave Mr. Casto. It is our zone map which I or our company prepared.

9049 Mr. MacIntyre: We will now offer that, Your Honor.

Mr. Leisure: This map, Your Honor, having to do purely with California sales, being intrastate shipments only, I object to it as being incompetent, irrelevant and immaterial as far as this proceeding is concerned.

9050 (COM. EX. No. 1297 was offered and received in evidence.)

The Witness: This document marked for identification as Commission's Exhibits 971-24-E, -F, and -G, is a photostatic copy of a letter of February 28, 1936, which I wrote

to Dr. Arthur R. Burns. Commission's Exhibits 971-23-A and -23-B are a photostatic copy of a letter of September 25, 1935, which I wrote to Dr. J. M. Clark. Commission's Exhibit 971-23-F and -23-G is a photostatic copy of a reply to the letter which I just described, from Dr Arthur R. Burns. The document marked 971-25-M, -N and -O
9051 is a photostatic copy of a letter dated March 31, 1936, which I wrote to Dr. Arthur R. Burns. I recognize the documents marked as Commission's Exhibits 971-23-U and -23-V as a letter from Professor Burns to me under date of September 13, 1935. As to whether the next to
9052 last paragraph of Exhibit 971-23-A and -23-B accurately describes action purported to have been taken by our company, and as shown by Exhibits 1203-M, N, O, P, Q, R and T, that is, action taken by our company on January 15, 1930, I will have to answer separately about
9053 each one. I have no doubt that 1203-P was sent out on January 15, 1930.

9055 At the time I wrote these letters to Dr. Clark and Professor Burns I made a study to the best of my ability to what our practices had been and as explained in these letters it was a lot of work, and it has all completely gone out of my mind, and I would have to go back and do the job over again to answer the question. On the basis of the research that I made at that time as to our company's practices, I would say that I intended the letters I wrote Dr. Clark and Professor Burns accurately to
9056 describe the practices of our company. I believed them to be true at the time I wrote them.

9057 Los Angeles, Calif.,
July 20, 1938.

9058 Mr. MacIntyre: If Your Honor please, we would like to ask an agreement on the part of Counsel that we withdraw Mr. Leonard for a matter of about 5 minutes so that we may ask another witness one or two questions. We will now call Mr. George Casto.

GEORGE D. CASTO, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

9059 I am an attorney-examiner for the Federal Trade Commission and have been so engaged a little more than 3 years. In connection with my duties as attorney-examiner for the Commission I have had occasion to make an investigation at the offices of the Riverside Portland Cement Company in the latter part of December 1936.

Q. What was the nature of the investigation that you conducted at that company at that time?

A. Well, I examined the correspondence files and interviewed Mr. Beckett, president; Miss Scott, secretary, and Mr. Leonard.

Q. Did you examine their files with their permission?

A. Yes, sir.

Q. And did they supervise the examination to any degree?

A. No; I was quite free to make the examination.

Q. Did you make selections from their files?

A. I did.

Q. Did they, as officials for the Riverside Company, see the selections that you made from their files?

A. Yes, sir.

Q. What arrangement, if any, did you make with them concerning those selections?

9060 A. Well, I requested copies of the documents selected, and Mr. Beckett assured me that such copies would be furnished. I think, however, he did qualify that statement, if there were any objections on the part of

counsel to any one particular document he would probably abide by the advice of counsel.

Q. Were copies of originals of the documents you selected furnished to you in accordance with that arrangement?

A. I think copies of all documents that I requested were so furnished.

Q. Mr. Casto, I am showing you a document, which has been marked for identification and received as Commission's Exhibit 1297, and ask you to state what you know about that?

A. When examining the files, I saw reference made to a zoning map, in examining the files of the Riverside Cement Company, and I requested Mr. Leonard, first, to get me a copy, and this is the document, or one exactly like it that he showed to me, but permission for its being furnished was given by Mr. Beckett.

Q. Are there any identifying marks on that that would positively identify it in your mind as the one that he did furnish you?

A. Yes; I have my signature and date and the number of the Commission's case in my own handwriting.

Q. Therefore, you identify it as the one that Mr. Leonard did furnish you?

9061 A. Yes, sir.

Mr. MacIntyre: That is all.

Cross-Examination by Mr. Leisure.

Q. Mr. Casto, when you were there you talked to Mr. Scott and Mr. Leonard?

A. Miss Scott.

Q. Miss Scott and Mr. Leonard and Mr. Beckett; is that true?

A. Yes, sir.

Q. Now, they gave you certain files, and you selected certain documents that you wanted; isn't that what happened?

A. Yes, sir.

Q. Then they were photostated and you turned the originals back to them?

A. No; I don't know anything about any photostats at all.

Q. You took copies?

A. I took copies.

9062 Mr. Works: There is no question about this particular map, the April, 1936, map. If you desire to offer it subject to our intrastate objection, we will make no objection.

Mr. MacIntyre: That is all at this time, Mr. Casto.

Examiner Norwood: Thank you, Mr. Casto.

Mr. MacIntyre: I will now recall Mr. Leonard.

Examiner Norwood: Mr. Leonard recalled.

WARREN H. LEONARD was thereupon recalled as a witness for the Commission, and, having been previously sworn, testified further as follows:

Direct Examination (Continued)

Mr. Leisure: The map that you have just been referring to was what exhibit number, Mr. MacIntyre?

Mr. MacIntyre: 1297.

By Mr. MacIntyre:

Q. Mr. Leonard, we have noted in certain documents that are now in evidence references that you have

9063 made to certain zoning maps you transmitted to Dr. Clark and Professor Burns, one referred to being June, 1925, Exhibit 971-34-P; October 22, 1937, Exhibit 971-23-A; October 28, 1927, Exhibit 971-23-A; July 29, 1929, Exhibit 971-24-E;—

Mr. Leisure: Now, just a moment. I don't understand this procedure. Is Counsel testifying or making a statement or interviewing the witness?

Mr. MacIntyre: I am making a list—

Examiner Norwood: He is asking a question, as I understand it.

Mr. MacIntyre: I am making a list, and I am going to ask him to furnish those maps to us referred to in other exhibits. They were maps attached to communications that were subject and called for under a subpoena that we have not yet received and we are now asking for them.

Mr. Leisure: I object to this form of examination. If there are exhibits he wants us to bring and wants to question the witness and ask if he referred to certain maps, all right, but to make a statement he did refer to certain maps, I don't know whether he did or not.

I object to the form of question.

Mr. MacIntyre: I am calling attention to references which the exhibits made and now I want him to furnish us the maps he referred to, whatever they are.

9064 Examiner Norwood: Counsel is making a request for these documents, and he is making an explanatory statement in connection therewith.

Mr. Leisure: He is paraphrasing the testimony in connection with the question. I don't know whether it is correct or not, in connection with the exhibits.

Examiner Norwood: The record will show it, and Counsel's statements are not in evidence.

Mr. MacIntyre: I am attempting to make explicit references to the exhibits in evidence in which these further references are made to the maps by the witness on the stand.

Examiner Norwood: In the nature of giving notice to produce, isn't that it?

Mr. MacIntyre: Yes.

Mr. Works: We will be glad to supply the list of maps if you give it to us.

Mr. MacIntyre: I would like to put this in the record in this way. I think there would be less time wasted in that way than any other way.

By Mr. MacIntyre:

Q. July 9, 1929, Exhibit 971-24-E; January 15, 1930, 971-23-B; July 29, 1930, Exhibit 971-24-N; September 15, 1934, Exhibit 971-25-M; December, 1934, Exhibit 971-25-M, and, of course, we have and it has been identified and

9065 received in evidence the map of April, 1936, of the Riverside Company so we will not ask for a duplicate of that.

9066 Mr. Leisure: That is 1297 you are speaking of?

Mr. MacIntyre: 1297.

We do, however, ask for the production of subsequent zone maps to the one of April, 1936.

Mr. Zimmerman: May I ask, are these maps that have to do solely with transactions within the state of California?

Mr. MacIntyre: It is not absolutely clear from the documents in the record which refer to them whether or not they overlap into Arizona.

Mr. Davis: 1297 is limited to Southern California, is that correct, Mr. MacIntyre?

Mr. MacIntyre: It appears to be a Southern California map.

The Witness: Will Mr. MacIntyre furnish us with a list of these references?

Mr. MacIntyre: I have read them for the record so that you and your Counsel will have a copy of them.

By Mr. MacIntyre:

Q. Now, Mr. Leonard, I show you Commission's Exhibit 1297, and ask you to explain and interpret the zones.

A. I testified about this map yesterday.

Q. Yes, it is in evidence now; and explain and interpret the zones that are outlined thereon; that is, the meaning of them.

9067 A. Could I see the—our price list for April, 1936, if there is one?

Mr. MacIntyre: Off the record.

Examiner Norwood: Off the record.

(There was a discussion off the record.)

(Witness examines documents.)

A. To the best of my recollection, according to this price list, April 1, 1936—

Q. What is the exhibit number on that?

A. The price list—this is 1295-4Z—giving destination prices generally through Southern California. These consumer prices were for delivery in the minimum quantity of 75 barrels to either the dealers' warehouse, or to jobs located within zones in which dealers' places of business are located, shipments to be made as one complete delivery to a single destination.

We quoted the same prices in a list for delivery f. o. b. cars at the destination prices named in minimum quantities of 160 barrels, when delivery is made via rail.

Q. That was for truck deliveries? The truck deliveries you spoke about were by your own trucks, were they not?

A. By our own trucks or by any truck. At that time we were hiring all of our trucks. It was all contract trucking.

9068 Q. But trucks either hired by you or owned by you; is that true?

A. We didn't own any at that time.

Examiner Norwood: The trucks were controlled by you; were they?

The Witness: We hired the trucks under contract under carrier regulations.

Now, this zone map was issued to designate zones in which dealers' places of business were located.

Examiner Norwood: Does a different price enter into that for each zone?

The Witness: As I recall, there is a large area here that shows in the lower portion of the map, zones 1 to 25, inclusive, over which area, subject to checking with the price lists, my recollection is that the price throughout that entire area was identical.

By Mr. MacIntyre:

Q. In other words, a flat price throughout the first 25 zones?

A. A flat price for the first 25 zones. Now, that area covers the district generally from as far east as Redlands and Riverside and some adjacent small towns to and including all of the San Fernando Valley, which is largely a part of the City of Los Angeles, and all of the Coast towns, Santa Monica and Long Beach and Huntington

9069 Beach and so on, all of the consuming area in what can be described as Orange County, Santa Anna, Orange, and Anaheim, and so on, down here (indicating). And the intervening area, as I glance through the price list, I think that that is a fact, that the price was identical throughout that area.

When you get outside of that area—and the prices were the same, according to my recollection, and that is confirmed by a quick glance through the price list in all of the other market zones from—well, this larger map covers zone 26. It is 1 to 26. I think I said 1 to 25, but it is 1 to 26, inclusive. So the zones numbered on the map from 27 to—

Q. Forty, isn't it?

A. —forty, had a zone price in each one, which I believe was the same in each zone.

Q. A flat price throughout the zone being the same?

A. A flat price throughout any one of those specific zones being the same. Now, it is possible that there might have been the same price, for instance, in zones 30 and 31. I would have to look it up to see. I can do that.

Q. Ordinarily, the price in one zone in that group from 27 to 40 varied from the price in other zones; is that correct?

A. It varied from the price in this large group of zones that I have described.

Q. And varied from each other in the group of 27 to 40?

9070 A. Probably varied from each other.

Q. As a general rule?

A. One would have to look at the price list and check it with each zone to be sure, but that is my recollection. Those prices were made for the zones at whatever prices there were in the list.

Q. Now, so much for the zoned territory, Mr. Leonard. Let us look at this that is not zoned. Here is a strip of territory between zones 24 and 17 in Orange County carrying no number. Is it also within the zoned area, or outside?

A. If I could look at that other map you had yesterday which shows mountains and valleys I could get myself located geographically a little better.

Mr. Works: I would like to ask the Examiner to take judicial notice of the fact the area Mr. MacIntyre mentions comprises the Santa Anna Mountains.

The Witness: I thought so.

Mr. MacIntyre: It so happens it is not within one of the zones. I wanted him to explain why it isn't.

Mr. Works: I think you will find that is the explanation.

By Mr. MacIntyre:

Q. This is Exhibit 971-34-P that you just asked to look at.

A. That wouldn't help me. It doesn't show mountains. That is my recollection, that this section which you
9071 point out which has no number is an uninhabited area of foothills.

Q. You say that is also true of the unzoned area north of the Imperial—

A. Just a minute.

Q. —County?

A. Just a minute. I would like to study this just a little further.

It would appear from looking at this other section of the map, that there are no towns in there.

Q. There is no cement shipped into that territory at all?

A. I doubt it.

Q. Do you know whether or not that your company does or does not ship cement into that territory, or has at any time within the last year and a half?

A. Well, I don't know, but I think it is very likely that we did not because it looks to me like it is a completely uninhabited area. I have been through that area; it is just all hills and canyons, and—

Q. What about the eastern half of Riverside County north of Imperial County? Do you ship cement into that along the Santa Fe Railroad?

A. We ship cement to Blythe, at times.

Q. That is over near the Colorado River in Riverside County; is that correct?

A. Yes.

9072 Q. Is that outside of the zoned area that you just described on this Exhibit 1297?

A. It appears to be.

Mr. Works: Which area is that?

The Witness: That is over near the Colorado River on the edge of the map right at the border of the State of California, on the Santa Fe; just opposite zone 31.

Mr. Works: May we have the witness' answer read?

Examiner Norwood: Read it.

(The answer was read.)

Mr. Leisure: The witness was asked whether or not they shipped in there, and we couldn't hear what he said.

Examiner Norwood: He was asked to locate this town, first.

By Mr. MacIntyre:

Q. What is your price at—

A. In this price list of April 1, 1936, Exhibit 1295-4-Z, consumers' price list, the printed figure is gross per barrel, $3.17.

Q. What is the price for Styx, the town north of Blythe on the same railroad?

Mr. Davis: The Court will take judicial notice there isn't any town there; it is a railroad station.

A. It is published as $3.17, also.

9073 By Mr. MacIntyre:

Q. It is published in your price list as $3.17. Did you ever ship cement there?

A. I don't think we ever did.

Q. You quoted a price there at $3.17, did you not?

Mr. Leisure: On that section Your Honor has just been looking at, we would like Your Honor to take judicial notice also that is the Colorado desert, and I think that should be a part of the record.

Examiner Norwood: The Commission will take judicial notice of that if they find that is the case.

The Witness: That is the case.

Mr. Works: We are willing to prove it, if Your Honor wishes.

Mr. MacIntyre: Off the record.

Examiner Norwood: Off the record.

(There was a discussion off the record.)

By Mr. MacIntyre:

Q. As to that territory in which Blythe is located and Styx and on which you have quoted the prices you have just named, that is outside of your zoning; can you tell whether or not the differences in the prices there vary in accordance with the differences in your freight rate from your Crestmore mill to those two different locations?

A. The differences between what towns?

9074 Q. The differences between Styx and Blythe; you have quoted prices between those two locations. Will you please state the differences between those two locations, from your Crestmore mill?

A. The prices are the same.

Q. No variation?

A. No.

Q. Do you know whether or not there is a variation from your Crestmore mill to those two places, on the Santa Fe?

A. I would have to look that up.

I would like to say further, Mr. MacIntyre, in further explanation of this map, that it is my recollection that where there were places at which cement is used, or bought, my recollection is that we made the price, whenever we made it, based on transportation from the nearest large center. For instance, the town of Ramona in San Diego County is outside of the zone area. I think the price at Ramona was on the basis of the cost of getting from San Diego out to Ramona by dealer truck but giving Ramona a comparable price with the dealer at San Diego.

Q. That is a Southern California point you are talking about?

A. These have all been Southern California points.

Q. As to Southern Arizona, that is not shown on this map: Would you say that the differences in the
9075 prices that you quoted to dealers as shown by your price list located in Yuma and Phoenix along the Southern Pacific vary in direct proportion to the variance of your freight rates from your Crestmore mill?

A. As of what period?

Mr. Works: I would like to have the question.

Examiner Norwood: Read the question.

(The question was read.)

A. I would like to see the Arizona price list. I think it is April.

Mr. Works: Your question relates to the variance of freight tariff as compared with price?

Mr. MacIntyre: Railroad freight tariff.

Mr. Davis: I would like to object to that question on the ground it calls for a conclusion of the witness. It is merely a mathematical computation and I would rather the Court make the computation. The Court has the list price in the exhibit which has been produced. If Mr. MacIntyre would ask the witness what the difference in the freight rates are, but I, personally, am not going to accept the witness' conclusion, and I object on that ground.

Mr. Works: The freight rates were the best evidence as to what the freight tariffs were at that time.

Examiner Norwood: He can prove it by these lists
9076 or he can prove it by a list that happens to be made of it.

Mr. Works: He asked price.

Mr. Davis: That was not my objection, if the Court please.

Examiner Norwood: Yes, I understand. I answered the other, first.

Mr. Davis: I would be willing to state the State freight rates.

Examiner Norwood: I don't think this is an objectionable conclusion for him to state, what the freight rates were and give the difference, too. I think he should give the rates, though, or state whether or not there existed an undetermined difference.

He can do that.

Mr. Leisure: It does seem to me the kind of prices—we are talking about prices stripped, and in another we are talking about sacks, and it does seem it should be clear in the question what type he is referring to.

Mr. MacIntyre: Talking about the prices that are quoted in his price list, whatever they include.

Examiner Norwood: Read the question.

(The question was read.)

A. I am sorry, Mr. MacIntyre; I don't know the freight rate differences between Yuma and Phoenix. The
9077 tariffs, of course, we have them.

Examiner Norwood: Do you know whether there is any difference?

The Witness: I am not sure, Your Honor. The freight rate through Western Arizona, I think, are about the same all over that section of the State, from our plant.

Examiner Norwood: I think the best way to do that is to get the rates and put them in. You have their prices, there, and the Commission can do its own comparing.

By Mr. MacIntyre:

Q. We will ask you this question, Mr. Leonard: Is there any difference in the methods that you use in computing the prices for those points in Arizona—that is, Yuma, Phoenix, and Douglas, than was the case when you wrote the letter to Dr. Clark and Professor Burns on March 31, 1936? Is there any different method used now than the method you used at that time?

A. Gosh, I don't remember what our prices were in March, 1936.

Q. I am not talking about what the prices were; I am talking about the method you used in determining the prices at those particular points, as well as other points in Southern California that are not within the zoned areas.

9078 Mr. Works: Do you mean by that do we still use the price-list method?

Mr. MacIntyre: No, I am talking about the method he used in quoting the prices at those particular points?

A. My recollection is that at that time, March, 1936, our price list reflected what we felt was the market price. I don't think we made the prices effective at that time.

By Mr. MacIntyre:

Q. I call your attention to a statement to the effect that in this correspondence of yours with Dr. Clark and Pro-

fessor Burns to the effect that the zone prices within the zone areas as quoted by your company bore certain relationships to your mill price at Crestmore, and that prices to locations not within the zoned areas bore certain other relationships to Crestmore as a basing-point mill. Will you say that there is any different method that would give rise to any different terminology in your price figuring today than was the case on March 31, 1936?

Mr. Leisure: Now, Your Honor, I think the witness should be shown the exhibit. Counsel has it there in his hand,—and then he can tell him whether they do it any differently now.

Examiner Norwood: Yes, he may do that, surely.

A. I would like to ask, Mr. MacIntyre, I don't quite understand your question.

9079 By Mr. MacIntyre:

Q. Is there any reason for applying any different terminology for your method of figuring prices today than there was the date you wrote these letters to Professor Burns and Dr. Clark?

A. The letters cover a large period of time, and, as I recall, the letters from reading them, as the description in the letters is different according to the time that I was talking about in the letters.

Q. Yes, but I am talking about as of the time that you described. You described the conditions on certain dates all the way down until the date of the letter.

A. Yes, but weren't we talking about this price list in Arizona as of today?

Q. Yes, we are talking about it now as against the period then. Is there any reason for considering the basis of the prices today differently than what they were the day you wrote that letter to Professor Burns and Dr. Clark?

A. For Arizona, you mean?

Q. For any Southern California or Arizona territory that is not in the zoned territory that you described in those letters to Dr. Clark and Professor Burns?

A. I would have to read these, first.

Mr. Leisure: I think we are taking unnecessary time.

Examiner Norwood: I think he has a right to
9080 have whether there is any difference now and when the map was prepared.

Mr. Leisure: Counsel's question appears to indicate he was talking about a specific time and specific instance. The witness says in his letters he was covering a large period of time.

Examiner Norwood: I think he may make that clear.

9081 Mr. MacIntyre: I am merely asking the witness to explain whether or not there is any difference; I mean, any reason for any difference in describing the conditions in the figuring of prices than now.

Mr. Leisure: Well, there is no evidence so far that he did figure them in a certain way, and I think we should have the facts first and then the explanations later.

Mr. MacIntyre: I thoroughly disagree with Mr. Leisure.

Examiner Norwood: The evidence is contained in those exhibits.

Mr. Leisure: Counsel says his question paraphrases a group of exhibits.

Mr. Davis: I make the objection, if the Court please, that the question assumes a state of facts which is not in evidence. The exhibits do not show the things which Mr. MacIntyre assumes.

Examiner Norwood: They are certainly in the exhibits because he is basing them on the exhibits.

Mr. Leisure: The question that Counsel puts does not correctly paraphrase the group of exhibits.

Examiner Norwood: I overrule the objection.

A. From reading these letters rather quickly, Mr. MacIntyre, I think it is correct to say that the zon-
9082 ing system which I have just described as illustrated by the map is somewhat different in a good many ways than the description that I gave in those letters. I think there have been changes. I think that the situation here has been in a constant state of flux. It has been changing all the time, and I think you would have to amend those letters to bring it down to date and describe the situation as it exists today. That is the impression I get from reading those letters.

As I told you yesterday, I have done a good deal of work at that time to try to give a true picture of what existed at that time, but there have been changes enough since so that I would hesitate to say that the situation today in so far as the zoning in Southern California is

concerned is the same exactly as described in those letters. I think it is different.

Q. Well, you have noted in the exhibits that I have just shown you, including 971-25M, that you referred to the system as used as a modified basing point zoning—a modified basing point system; that is, as modified by the use of a zone in connection with it, haven't you? Now, is it any different other than a little further modification through the use of the zone systems today than from the day on which you wrote this letter?

A. I think it is, and I think that it was a mistake to call it a modified zoning system. As I recall those
9083 questionnaires, the questionnaire itself described what was sought to be their description of a basing point. I never felt that we were operating on any basing point system as I heard it out here, as I have heard descriptions of what it is supposed to be in other parts of the country. I am not familiar with it. But at the time, in writing those letters, I was assuming or taking the description of a basing point system that the questionnaire itself outlined, and I don't think it is correct to say today that it is any modified zoning system of a basing point system. There are just literally hundreds of different mill nets in Southern California depending on the manner of delivery and the destination and the spot in a destination. In Los Angeles, for instance, we don't know until we have made a delivery what the mill net is going to be, because we don't know the manner in which the delivery is going to be made until the order is delivered.

Q. What about Southern Arizona along the Southern Pacific between Yuma and Phoenix?

A. I wish I could—

Q. Do you remember what sort of deliveries were made to those points?

A. We would be able to determine it after we make delivery, of course.

Q. You never determine before any shipment when you quote your price as to what your mill nets are likely to be?

9084 A. Oh, no.

Q. In cases where you attempt to lead in price-making, such as was described by Mr. Beckett, when he was on the stand yesterday?

A. That is one of those "never" questions. I am not

sure without going back and studying all of the price lists that I could answer that honestly. We may have.

Q. Isn't it a fact, Mr. Leonard, and do you deny it is a fact that today points in Southern Arizona or along the Southern Pacific carry back to your mill a mill net at Crestmore of $1.72 such as described in the first paragraph of your letter of March 31, 1936?

A. I am quite—

Mr. Works: Now, may I ask—

Examiner Norwood: Exhibit what?

Mr. Works: May I ask which—

Examiner Norwood: Wait a minute.

Mr. MacIntyre: That is 971-25M.

Examiner Norwood: I will hear from the Counsel.

Mr. Works: May I ask which question Mr. MacIntyre wants answered? He says, "Is it a fact, or do you deny that it is a fact." Now, there are two questions.

Mr. MacIntyre: We will ask him to answer—

Examiner Norwood: I think not. I think that is the same question. It appears to be so.

9085 Mr. Davis: The answer "yes" would make it quite different in answering the question.

Examiner Norwood: If he says it is a fact, then he answers the other one necessarily.

Mr. Works: I want him to understand that he can hardly answer—

Examiner Norwood: Is it a fact that he does not deny.

The Witness: Again I will have to ask—

Mr. Works: May we have the question read?

Examiner Norwood: Read the question.

(The question was read.)

Mr. Works: Now, may the witness be directed not to answer that question "yes" or "no"?

Examiner Norwood: I think not.

A. My impression—my recollection is that our mill—you said what is our mill net for shipments to Southern Arizona today?

Q. At Yuma?

A. At Yuma?

Q. Yes.

A. It is not $1.72; I am sure of that.

Examiner Norwood: Then he denies that it is a fact.

The Witness: Well, no. This letter says—speaks of a period in 1930 when it speaks of $1.72.

Examiner Norwood: Yes.

9086 By Mr. MacIntyre:

Q. Well, the computation of your price there plus the freight—I mean, less the freight back to your mill, stripped, would show you what your mill net is and whether or not it does agree with the price you have quoted in the first paragraph of that letter; will it not?

A. This exhibit, 971-25M, that you point to talks about after July 29, 1930, prices throughout zones 1 to 20 established on a mill base of $1.72 at the Crestmore plant plus freight to Los Angeles. That situation has entirely changed since that time.

Q. Well, I am talking about Southern Arizona now, as to the mill nets on that.

A. We do not have a net of $1.72 in Southern Arizona. My best recollection is that we net around $1.60.

Q. I am talking about Yuma.

A. At Yuma, and I think also Phoenix.

Q. Well, if your prices quoted in that price list, less the freight back to Crestmore, shows $1.72, you would think that it would still agree somewhat with the first paragraph of 925—

A. No.

Q. —971-25M?

A. This first paragraph that we are speaking about was a description of the zoning system of Southern California.

9087 Examiner Norwood: Can you tell us what the difference is between the methods used at the time that exhibit was made and now?

The Witness: You are speaking of this last exhibit?

Examiner Norwood: Yes.

The Witness: That he just had?

Examiner Norwood: Yes.

The Witness: That exhibit, that paragraph in that last exhibit we were speaking of describes the system that was in effect around the period of July 29, 1930, and at that time the exhibit says that the prices were based on $1.72 plus freight to zones 1 to so and so.

Examiner Norwood: Yes.

The Witness: Now, that is not the situation today. The freights are different today; the delivery methods are different. We have different prices, different ways of making prices to the dealer; different methods of delivery and the methods of delivery today are controlled—

Examiner Norwood: What are those different ways of making the prices and different methods of delivery?

The Witness: Well, we offer—we put out a consumers' price list, and we put out resale price agreements under the California State Fair Trade Act with them for Southern California, as I am speaking of. Now, we
9088 quote a dealer by rail f.o.b. his warehouse; we quote a dealer by truck f.o.b. his warehouse a different price; we quote a dealer for delivery to his job or any job in minimum quantities of 75 barrels a higher price for the job delivery. We didn't do that in 1930.

9089 Examiner Norwood: Go ahead.

By Mr. MacIntyre:

Q. You don't offer truck deliveries to Yuma, or make truck deliveries to Yuma and Phoenix, do you, from your Crestmore mill?

A. Not generally, but I think we have made some. We reserve the right to make them by truck at the published prices, and it all depends on the cost to us.

Q. You find that the cost in truck deliveries to that distant point—that is, from here to Phoenix—is more than by rail?

A. At the present time I think they are just about equal.

Q. But you don't use trucks as a general rule in making those deliveries?

A. We don't because the dealers don't ever order any in trucks. We don't like deliveries in Phoenix. We would if they asked for them. I think we do to Yuma, make truck deliveries, yes.

Q. Well, so much for the different prices that you have quoted in your price lists for those points along the Southern Pacific from Yuma to Phoenix. I will now ask you about the prices on the Santa Fe between Kingman and Holbrook, all of which you quote for rail delivery at price of $3.20.

Will you please explain especially in those cases in which you have led in price making, in those in-
9090 stances as described by Mr. Beckett yesterday, how you arrive at the $3.20 price for each of those points all the way across Arizona on the Santa Fe that carries different freight rates from your Crestmore mill?

Mr. Leisure: Objected to.

Mr. Works: Objected to as assuming facts.

Mr. Davis: Objected to as assuming facts—pardon me.

Mr. Works: —not in evidence as to the freight rates.

Examiner Norwood: Read that.

(The question was read.)

Examiner Norwood: Now, what is Counsel's point?

Mr. Works: The point is that there is no evidence in the record whatever as to any differing freight rates, or any freight rates at all affecting the two points which Counsel mentions. Therefore, the question assumes facts not in evidence.

Mr. MacIntyre: I didn't mention two points. I mentioned the entire strip of the Santa Fe Railroad from Holbrook to Kingman all the way across the State. If the witness denies if there is any difference, or states that he will not admit that there is any difference in the freight rates on the Santa Fe from the eastern to the western border of Arizona, then I will admit that we would

9091 not have in the record any reason for assuming that there is any difference in freight rates.

Examiner Norwood: I shall sustain the objection and we will have a five-minute recess. Counsel may bring out those facts and lay the ground for that,—bring in that information.

(There was a short recess taken.)

Mr. MacIntyre: Is there a question pending?

Examiner Norwood: No.

Off the record.

(There was a discussion off the record.)

By Mr. MacIntyre:

Q. Mr. Leonard, I am showing you again documents which have been marked for identification as Commission's Exhibits 1203-M, N, O, P, Q, R, and T, and ask you to state whether or not since yesterday you have made any check of your records so that you are in a better position now to recognize or identify those particular documents?

9092 Exhibit 1203-P is a photostatic copy of the circular we sent to certain dealers. 1203-R appears to be a photostat of an office copy of a letter written from our office. I have no reason to doubt that it is such, although I personally didn't ever see it.

Mr. Works: We do not question the exhibit.

The Witness: The same answer applies to 1203-Q.

Mr. Works: No question.

The Witness: 1203-T, a letter from Gibbs Lumber Company to the Riverside Portland Cement Company, attention W. R. Leonard; I don't recall having seen it, but I think probably we did receive it.

Mr. Works: Most of these, of course, will be subject to the intrastate objection.

Examiner Norwood: Yes.

9093 Mr. Works: This one is objected to as being an independent writing of a third person in no way connected with the Riverside Cement Company, and, therefore, no proper foundation laid. That objection is lodged as to 1203-T.

The Witness: I have no recollection of having seen 1203-M, but that is my initial on it as I must have. I don't recognize the handwriting and as to which Mr. Beckett expressed an opinion yesterday, but I recognize my own initial there in my own handwriting.

Mr. Works: The current exhibit, 1203-M, is also objected to as being apparently the disconnected act of a third person not shown to be connected with the Riverside Cement Company, and therefore not admissible on that ground.

The Witness: 1203-N is undoubtedly a photostatic copy of a letter which we sent to dealers in Southern California.

Mr. MacIntyre: If Your Honor please, we again offer these in evidence, and may state as to the two letters

9094 written by the Gibbs Lumber Company, and to which objections have been made on the ground that it was written by a third party, that they and the other exhibits in that group show they were written as a result of cooperative efforts on the part of the Respondent, Riverside, and a group of dealers, which, in that particular instance, was being represented to some degree by the Gibbs Lumber Company.

Mr. Works: I think it goes without saying we question the accuracy of that statement. Obviously, they are hearsay, as to any recitals of past events.

Mr. Davis: Might I object to the whole group on the ground they are incompetent, irrelevant, and immaterial; particularly to the Gibbs letters, and as to the Gibbs letters, on the ground that as against any one except Riverside they are even not hearsay, and there is no foundation

laid to bring them within any of the exceptions of the hearsay rule.

Examiner Norwood: I find this 1203-M ties in with this circular here. 1203-T ties in with the zone map. I have looked over these since yesterday, and I shall overrule the objections and receive the exhibits as marked, 1203-M, N, O, P, Q, R, and T.

(COM. EX. 1203-M, 1203-N, 1203-O, 1203-P, 1203-Q,
9095 1203-R, and 1203-T, were offered and received in evidence.)

The Witness: Commissioner's exhibit marked 562-T-U is a letter of September 20, 1935, addressed to the Riverside Portland Cement Company from Mr. Totten, Secretary of the Arizona Retail Lumber & Supply Association. 562-7-S, a letter of September 25, 1935, is my reply to that letter. I recognize it as such. 562-15-I is a letter of March 12, 1934, to the Los Angeles County Build-
9096 ing Association from me. 562-15-H, is a letter from that association, of March 14, 1934, to my attention. 562-15-J, March 20, 1934, is a letter which I wrote to the Los Angeles County Building & Material Association. I recognize these and identify them as such. 1203-NN is a letter to Riverside Portland Cement, June 18, 1931, from the Building Material Dealers Association of San Diego, and 1203-MM is my reply to that letter of July 21, 1931.

Mr. MacIntyre: Your Honor, we offer these two documents in evidence.

Mr. Leisure: Your Honor, these two exhibits, one being a letter from the Building Material Dealers Association, which is replied to the witness, the first letter is an inquiry about the establishing of a new dealer, and the reply—if Your Honor will look at the letter you will be convinced that it is not within any of the issues in the case. We
9097 object to both of them as incompetent, irrelevant, and immaterial, the first one not having been properly identified, the writer of the Building Material Dealers Association not having been called, and it is encumbering the record with useless material. It also is objectionable because the letters do not come within any of the issues, and we object to them.

9098 Mr. Works: I would like a further objection to the letter from the Dealers Association.

Examiner Norwood: Yes.

Mr. Works: That it is manifest and rank hearsay, im-

material, and no proper foundation laid, and the act of an independent third party in no way connected with or binding upon the Riverside Cement Company.

Examiner Norwood: I think, as we have pointed out from time to time, that it will be apparent in the final study in summing up this case, that these documents are revelant and material, and I shall overrule the objections and receive the exhibits as marked—that is, 1203-MM and NN.

9098 (COM. EX. 1203-MM and 1203-NN was offered and received in evidence.)

The Witness: The exhibit marked 1298-A and -B, 9099 August 17, 1936, is a copy of a memorandum that I wrote to Mr. Beckett on that date. I recognize it as such.

(COM. EX. 1298-A and 1298-B was offered and received in evidence.)

9099 Examiner Norwood: Received as marked.

(COM. EX. 1298-A and 1298-B was offered and received in evidence.)

By Mr. MacIntyre:

Q. Mr. Leonard, will you please state whether or not your company, the Riverside Cement Company, receives or has received over the past year and a half land grant rates from Mr. James A. Keller?

A. Well, at times Mr. Keller's office sends over copies of letters that he gets or are furnished him by the railroads giving the land grant rates to various points, 9100 and we have received copies of those letters.

Q. Now, in that connection, did you furnish any information at all to Mr. Keller concerning land grant rates from your office?

A. No, I don't think we do.

Q. You don't recall having supplied Mr. Keller's office with any land grant rates at any time since he set his office up at 608 South Hill Street in Los Angeles in September, 1936?

A. No, I don't recall it.

Q. You will not state positively, though, that you have not furnished him land grant rates in that time?

A. All I can say is that I don't recall having done so or knowing of the office having done so.

Q. Now, as to the memos on which he furnished you

land grant rates, what were done with those in your office when you received them from him?

A. They were put in the file.

Q. Was any use made of them at all?

A. I think not, no.

Q. Were they considered or studied at all by anyone in your organization before the submitting of bids by your company on particular U. S. Government projects?

A. To answer your question specifically, I think the answer is no. If we were submitting a bid on a
9101 government project that involved land grant rates, we would be inclined to take little notice of what we had from Mr. Keller's office. We would go to the railroads and ask them directly what the rate was in order to consider it. We can get those rates direct from the railroads, and that is a lot better, more accurate information than to get them any other way. As a matter of fact, sometimes we get them from the government offices.

Q. Do you deny that at times you have ever done anything with the land grant rate memos that you received from Mr. Keller other than file them in your files in the Riverside Company's offices?

A. Well—

Mr. Works: Object to the form of the question as argumentative and not attempting to elicit any fact whatever.

Examiner Norwood: The objection is overruled.

A. Mr. MacIntyre, as I understood your question, you asked me if we used those rates in connection with bids that we had made to the government.

Q. Yes.

A. And I answered that question. Now, as I understand it—

Examiner Norwood: Your answer was that you did not use them.

The Witness: I said that if we had—if we were
9102 making a bid to the government, we would get the rates direct from the railroad without regard to any other land grant information we might have. Land grant rates are changing here—

Examiner Norwood: And in case the railroad figures disagreed with the information supplied there, then you would follow the railroad figures, is that right?

The Witness: Surely, if we were going to use the figures at all in any calculation, but as a matter of fact, again

you have a situation here that is probably a little different than in most places, so far as our mill is concerned. We are off the land grant line. We are on a non-land grant line for about five miles. The Union Pacific, where the junction is with the Southern Pacific at Bloomington is where we are, and the land grant rates mean a lot less to us than they might to somebody else for that reason.

Q. You do, however, ship cement to the U. S. Government over land grant railroads, do you not?

A. Yes, sure.

Q. That is—

A. They have to go part of the haul over land grant roads if the government was buying it on a land grant bill of lading or a government bill of lading, otherwise they wouldn't use a government bill of lading.

9103 Q. Now, do you state whether or not you have used a land grant rate in any of your quotations to the Federal Government that would be the same as those that Mr. Keller submitted to you in his memos?

A. I don't know how the dickens I would know that.

Mr. Works: May we have the question? I think it is a trifle general.

Examiner Norwood: Read the question.

(The question was read.)

9104 A. I wouldn't know that. We might have got the same rate from the railroad that he gives, and used it.

Q. You don't deny at this time that you have used, or probably have used rates that agreed with those that Mr. Keller furnished you, then?

A. If Mr. Keller got his rates from the railroad, and we got ours from the same railroad, and they were both alike, obviously we would be using the same rates.

Q. Do you deny that in all cases where there were disagreements in the rates furnished by Mr. Keller and those furnished by the railroad, you failed to use those furnished by Mr. Keller and used the railroad rates?

A. I don't think we paid much attention to land-grant rates in any bids we made to the Government.

Mr. Leisure: I object to this question. There is no occasion for him to be called upon to deny anything until the facts are brought out, and the facts have not yet been brought out.

Examiner Norwood: He is trying to bring the facts out.

Objection overruled. Read the question.

(The question was read.)

Mr. Leisure: I object to the question further on the ground the witness has already answered. The witness said what he did with Mr. Keller's information and
9105 said how he used it.

Mr. Works: Your Honor asked him that very question and he said he followed the railroad rates, a moment ago.

Examiner Norwood: Objection overruled. Read the question.

(The question was read.)

Mr. Davis: I wish to object on the ground it assumes a state of facts that is not in evidence. There is no evidence that there were any disagreements, or that this witness knows of any disagreements between the rates furnished by Mr. Keller and the rates furnished by the railroads.

Examiner Norwood: I think the possibility of a little disagreement has appeared in the evidence.

Overruled.

Answer the question.

A. I don't know.

By Mr. MacIntyre:

Q. That is, you will not deny that you haven't, in those cases, used Mr. Keller's rates, then?

Mr. Leisure: I object to that.

Examiner Norwood: Objection overruled. I don't think his previous answer was responsive to the question.

Mr. Works: I move to strike it out.

9106 Examiner Norwood: He doesn't know whether he denied it or not.

Mr. Works: I move to strike out the answer as not being responsive. I think it would help us all materially if Mr. MacIntyre would reframe the question.

Examiner Norwood: I will deny the motion to strike the answer and ask the witness to give me a direct answer to that question as to whether or not he denies using the railroad rates as stated.

Mr. Leisure: May we know which question you are asking him to answer?

Examiner Norwood: The last question that was asked.

Mr. Leisure: Out of the group of questions, which is not one question, which one Your Honor now wishes him to answer?

Examiner Norwood: I think it is just one question. Answer the question.

A. As I understand it—I would like to be clear—your question is whether or not we have ever—

By Mr. MacIntyre:

Q. Whether or not that you deny that now you use Mr. Keller's rates when you get other land-grant rates that disagrees with his, in all cases?

Mr. Works: From the railroad.

9107 A. I would like to try to answer the question, but—

Examiner Norwood: Go ahead.

A. —but I don't think it is possible to do it. I don't understand what Mr. MacIntyre is asking me. I can explain what we do.

Examiner Norwood: Well, in cases which you have referred to where the railroad rates differ from the rates furnished you by Mr. Keller, have you ever used the Keller rates instead of the railroad rates?

The Witness: We might have.

Examiner Norwood: You don't deny, then, that you have sometimes done that; is that right?

The Witness: I don't either deny it or admit it. I don't know.

Mr. MacIntyre: The witness is under oath here, and I am attempting to get a positive statement out of him as to what is the practice and that is what my previous questions have been, and that is all my efforts are intended for.

Mr. Works: I don't think there is anything pending.

Examiner Norwood: That is right, there is nothing pending.

Mr. Davis: Is that a question?

Mr. MacIntyre: No, I stated that was what my previous questions were intended for.

9108 Exhibits marked for identification as 564-TTT and 564-UUU are memoranda from Mr. Keller of September 4, 1936, to various people giving the report of what the executive traffic representatives of the Southern Pacific agreed about certain rates. I recognize that as a copy that was received by our office. 564-JJ and KK is a photostatic copy of a letter of September 14, 1936, addressed to Mr. Merrill of the Southwestern Portland Cement Company by Mr. Keller, and I recognize it as a copy of a docu-

ment that we received in our office. 564-PPP, dated
9109 December 11, 1936, is a memorandum to various people from Mr. Keller in regard to land grant rates to Tucson, Arizona, which he says he got from the Southern Pacific and I recognize it as a photostatic copy received by our office.

As to the figures in pencil in the last column of this exhibit, I presume it is the handwriting of someone in our office. This is a photostat of a document that I think was one of the documents we furnished under that subpoena. I have no doubt that was on there when we furnished it to you. It translates the figures from hundredweight to barrel, and I have no doubt someone in our office figured it. I don't recognize the handwriting as being someone in our office. It is too good to be my handwriting. I don't recognize it. As to the handwriting at the bottom of the page, I don't recognize that but I don't question it. I think undoubtedly it was figured in our office. I am sure
9110 it is not the handwriting of Mr. John C. Allen in our sales department. I think it is undoubtedly the handwriting of someone in our office, however.

564-QQQ is another memorandum from Keller to various people, December 24, 1936. It gives the rate that the Southern Pacific had given him to a couple of points in Arizona. This came from our office. There is no doubt about it, in my mind. As to the pencil column of figures appearing on the exhibit, I don't know whose handwriting it is. These rates might have been figured by any one of several people. It is a matter of arithmetic; get someone with a calculator to figure them; whoever happens to be handy. At this time it probably was the practice of our office to receive those rates from Mr. Keller and then translate the rate received in the manner it is trans-
9111 lated there by placing thereon the conversion in pencil figures. I think we always figure these hundredweights into per barrel, in our office. We probably did translate the figures given by Mr. Keller and place them in pencil. I recall we did that with Mr. Keller's rates. I am sorry I don't recognize the handwriting at the bottom of 564-QQQ.

We have a man in our office by the name of Board-
9112 man. He is a clerk in the accounting department. I don't know his handwriting nor do I see specimens of it from day to day.

564-XXX is a memorandum of September 28, 1936, Keller to various people, and I recognize it as one which is a photostat of a copy—a photostat of a copy you got from our
9113 office. It has my handwriting on it. At the bottom of the page under my name addressed to Mr. Beckett, it reads: "Mr. Beckett: Guthrie wired a protest to I. C. C. against figuring higher rates to Arizona. W. H. L."

The exhibit marked 564-C is a memorandum of January 9, 1937, from Keller to various people and is a photostat copy of one received by our office. The words "The check emergency charges" near the top of the page looks like my handwriting. I think it is. I don't recognize the handwriting along the righthand margin down the page. I
9114 don't know whose that is. The word "Boardman" looks like Mr. Allen's writing.

564-T, dated January 11, 1937, is a photostat of a document received by our office from Mr. Keller. I don't recognize that handwriting. The word "Boardman" at the bottom looks like Allen's handwriting. "A" stands for the initial of Mr. Allen. I think, insofar as these
9115 figures that are on all of these, that there is no question in my mind but that Mr. Allen probably had someone in his office figure them. It is always our practice to do that, not only with these but with all other rates. We try to figure them into a per-barrel rate. I will accept those as figures placed on there by one of the clerks in our office since I know those documents came from us to you under the subpoena there can just be no question about it. I can't name the person. It might be any one of several per-
9116 sons. I ask anybody that is handy to figure rates for me. Any one can do that who can do arithmetic. And that was done in the conversion from hundredweight to barrels.

564-R, dated January 11, 1937, is a photostat of a memorandum received by our office from Mr. Keller. Commission's exhibit marked 564-AAA, D, G, H, GGG, EEE, SS, FF, CC, V, Q. I, DD, YY, XX, SS, Z, WWW, S, WW, UU, NN, TT, VV, JJJ, VVV, III, KKK, and LLL, I can
9117 identify as copies of memoranda from Keller to our office amongst others, giving various rates of one sort or another. I would like to call Mr. MacIntyre's attention to this handwriting here, if I may. On 564-I at the bottom of the page. This is a notation. I think it looks like Mr.

Allen's handwriting in a way—from apparently our salesman in Arizona giving us a different land grant rate than the rate contained in Mr. Keller's information. I
9118 think that is in Mr. Allen's handwriting and these rates that our salesman apparently obtained from probably some government agency in Arizona are different than the rates shown in Mr. Keller's. In a case like that we would be very much inclined to try and find out which was the right rate.

As to the columns of conversions that appear in pencil on these exhibits, I have no doubt they were all figured in our office and placed on there by some clerk in our office. I wouldn't question that.

9119 I am positive as to the papers being photostats being received by our company.

John C. Allen is our sales manager, he works under my direction and supervision as sales manager. As to his general function with respect to these land grant rates we receive from Mr. Keller, he just probably looks at them. I don't think he has any function, as you might call it.

9122 Mr. Leisure: We have no questions, Your Honor.

(Witness excused.)

GEORGE D. CASTO was thereupon recalled as a witness for the Commission, and, having been previously sworn, testified further as follows:

Direct Examination by Mr. Wooden.

Q. Mr. Casto, in connection with your investigation for the Federal Trade Commission late in 1936, did you have occasion to talk with Mr. C. C. Merrill of the Southwestern Portland Cement Company?

A. Yes, sir.

Q. Did you question him with regard to whether or not there was in existence in this area a basing-point system?

A. Yes, sir.

Q. Will you state what he said in that connection?

9125 A. Well, as nearly as I can recollect, his statement was to the effect that the system used out here was a modified zoning system, and that there were some base mills.

By Mr. Wooden:

Q. Did you ask him what the base mills were?

A. Yes, and he instanced two that I recall.

Q. What were they?

A. Those two were Crestmore and Colton.

9126 Q. Can you fix the time when that conversation occurred?

A. Well, I would say that it is the week before Christmas, 1936, as I recall.

Q. Was anyone else present besides you and Mr. Merrill?

A. During a part of the interview, I don't recall at just what stage, I think Mr. Partridge was called in and I think he stayed during the balance of the meeting.

Q. Did you discuss with Mr. Merrill the question of mills selling for delivery to dealers' trucks?

A. Yes, sir.

Q. What did he say with regard to that?

A. Well, as I recall he thought that that sort of a plan would be—

Q. Did he say he thought? I am asking you to say what he said.

A. Well, he expressed—

Mr. Leisure: May we have the same objection that was made to the previous questions to this question regarding trucking?

Examiner Norwood: Certainly.

A. He said there would be so many trucks in the business so as to render the thing impracticable because practically each dealer would want to have his own truck.

Q. Did you discuss with him the effect of that upon prices?

9127 A. Yes. He stated that in his judgment such an arrangement would probably, or would result in varying prices.

Q. What kind of varying policies?

A. As I recall he said that some dealers would truck the cement to a given destination more cheaply than others would, and that would necessarily influence the mill costs of the cement company using that particular dealer.

Q. I am showing you papers marked for identification exhibit 1213-A and -B. Can you say what that is (handing documents to the witness)?

A. Yes, this is a typewritten statement which I re-

ceived from Mr. Merrill in answer to my request for mill base prices.

Q. I would like to ask you to refresh your recollection by a check on the back of the paper and see if you wish to correct your testimony?

A. (Referring to document.) Yes. As I look over this paper I would change my answer to the question.

Q. What would you say?

A. I received this document from the files of Mr. Gay of the Santa Cruz Portland Cement Company.

Q. On what occasion and in what connection?

A. I made an investigation of the Santa Cruz Portland Cement Company files and requested copies of certain letters and documents on filo in Mr. Gay's office.

Q. Was that paper a copy of one of the selections you made?

A. Yes, sir.

9128 Q. Who provided you the copy?

A. Mr. George Gay.

Q. Did you at that time or subsequently interview Mr. Gay with regard to the source from which he had received that paper?

A. Yes, I subsequently went back and checked with Mr. Gay and, as I recall it, Mr. Gay had two types of documents in his files; one represented letters written by him or someone in his office, and replies received thereto, and the other represented papers that came to him from Mr. Keller of the Cement Institute.

Q. Did you ask Mr. Gay from whom he had received this paper, a copy of which you hold?

A. I did.

Q. And what was his reply?

Mr. Davis: Objected to as hearsay, if the Court please.

Examiner Norwood: Objection overruled.

A. He replied that he had obtained this paper, of which this is a copy, from Mr. Keller.

By Mr. Wooden:

Q. Did he say how he obtained it, whether by mail or otherwise?

A. As I recall it, he said they came to him by mail.

Mr. Wooden: I have no further questions.

9129 Mr. Leisure: Are you going to offer this, Mr. Wooden, or is it already in evidence?

Mr. Wooden: No, I am not offering it at this time.
9130 Mr. Leisure: Have you finished, Mr. Wooden?
Mr. Wooden: Yes.

Cross Examination by Mr. Leisure.

Q. Mr. Casto, you had a talk with Mr. Merrill when you were there, you say, in December of 1936?
A. Yes, sir.
Q. And as I understood you to say, he said that this was a modified zoning system, and there were two basing points, two basing mills, two base mills.
A. Yes, sir.
Q. Did Mr. Merrill explain to you what he had intended, or what he meant by the term "base mill"?
A. Well, I think he did state—in fact, I recall he stated that the mill base as used out here was not the same idea as the mill base used in the East.

9132 JAMES A. KELLER, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

Direct Examination by Mr. Paulson.

My present position is secretary and manager of the Pacific Coast Cement Institute. I have held that position since the latter part of September 1936. Prior to that, for a number of years I was in the industrial and commercial world. Prior to December 31, 1934, I was associated with the Pacific Portland Cement Company in San
Francisco, California, for twenty-five years. During
9133 the last 5 years with that company I was the so-called vice-president in charge of sales and transportation.

Q. Was the Pacific Portland Cement Company a
9134 member of the Cement Institute while you were in its employ?
A. We joined the Cement Institute in the latter part of 1933 on account it was our understanding that we had to join the Institute to secure all of the provisions of the Cement Code as approved by the President in the latter part of 1933.

Q. Are you familiar with the services rendered by the Cement Institute at that time?

A. What services?

Q. What services did they render to you at that time? Did they render any services to you?

A. None, other than this: That under Article IX of the Cement Code we were required to file our prices in terms of sale with the Cement Code and broadcast them to the trade, the dealers and the buying public, so everybody would be familiar with our price list.

Q. Have you had any traffic experience, Mr. Keller?

A. I think so.

Q. What traffic experience, freight rate experience?

A. Well, for a number of years I was the secretary to the chairman of the Pacific Coast Jobbers and Manufacturers Association, which was later called the Pacific Coast Hardware and Metal Association.

Q. Before—

A. Pardon me just a minute.

Examiner Norwood: Let him answer.

9135 A. (Continuing) And for a number of years I handled transportation affairs for quite a number of subsidiaries that Baker-Hamilton were associated with. I was one of the leading—lead off the leading—I was one of the commercial witnesses for the Southern Pacific Company in the Central Pacific-Union Pacific separation case, and I was one of the organizers, and members of the Executive Committee of the Pacific Coast Transportation Advisory Board, which President Hoover suggested to the different industries in different parts of the country to sort of help curb the car shortages.

9136 I am a practitioner before the State and Interstate Commerce Commissions. The Pacific Portland Cement Company had some 50, 60 miles of railroad at their different plants. We had two railroads, one called the Cement, Tolenas & Tidewater Railroad Company, and the other, the California Central Railroad Company, which were two railroads which were under the supervision of the State and Interstate Commerce Commission.

Q. I think that is sufficient to qualify you as a freight rate expert, Mr. Keller.

Would you say that that was your principal qualification for Institute service?

A. Institute service?

Q. Yes.

A. What do you mean by "Institute service"?

Q. Trade association service.

A. I don't know that I have anything to do with trade association work.

Q. Your present work is trade association work, is it not?

A. My present work is the secretary and manager of the Pacific Coast Cement Institute, which was organized, incorporated as a non-profit-sharing corporation under the laws of California in the latter part of September, 1936.

Q. That makes it a trade association, doesn't it?

A. A trade association.

9137 Q. Would you say that your qualifications as a freight expert had anything to do with you being chosen as the secretary and general manager of this Institute?

A. None whatever.

Q. Do your duties involve any freight rate calculations?

A. I calculate no freight rates.

Q. Do you have any supervision over the calculation?

A. No, sir.

Q. Over land grant rates?

A. No, sir.

9138 Q. Mr. Keller, where is the Pacific Coast Cement Institute located?

A. Located at 608 South Hill Street, Los Angeles, California.

Q. Will you describe briefly the general scope of 9139 its activities, briefly as possible, please?

A. The Pacific Coast Cement Institute is a non-profit corporation organized under the laws of the State of California. Their incorporation papers were approved by the Secretary of the State and the Corporation Commission, in a general way. Very briefly, we secure statistical data and broadcast it or disseminate it to the cement manufacturers in Southern California and in other sections of California and Oregon and Washington west of the Cascade mountains.

Q. Can you break down your activities into groups?

9140 A. Well, first, our general group, or the general information furnished, is that we are living in a stream-lined age at the present time, and things are happening pretty fast as far as Washington is concerned, and we are on the mailing list of the Department of Justice, the Federal Trade Commission, the Interstate Commerce Commission, the Department of Labor, and all of their releases which are mailed us at the time they are released to other organizations. We analyze them and if there is anything in these releases that we think are of interest to the cement industry on the Pacific Coast, we mail a synopsis of those releases.

Q. Do you find—

A. Pardon me.

Q. Pardon me for interrupting.

A. Let me get this thing straightened out, now.

Q. I would like to have you allow an interruption. I will ask you the question and you answer it.

A. When you interrupt by asking questions you divert my train of thought.

9142 A. My duty also required of me to read, during the time Congress was in session, to read the Congressional Record daily. There are a number of items in the Record daily that are of interest to the Pacific Coast cement manufacturers. We also have a press release from Dun and Bradstreet, New York, weekly; they furnish the bank clearings of twenty of the largest cities of the United States. We furnish that to our members.

9143 A. Well, Dun and Bradstreet, New York, release weekly to certain subscribers, and we are on the mailing list, the bank clearings of twenty of the largest cities of the United States, and this is an indication of the trend of business, either up or down, throughout the United States. We—

9144 By Mr. Paulson:

Q. Mr. Keller, what does your Institute do regarding contract checking?

A. In our second service, which the local members at different sections may have the advantage of if they care to take advantage of it, the members file contracts of closed shipments and once a month the auditors, or the credit experts of the different companies, file a statement showing the delinquent accounts.

Q. Not being a cement man, I am not clear in my own mind just what all that means so I ask you to de-
9145 scribe, if you will, from memory, one report received from, let us say, the Riverside Company. You can take one from random, out of your mind.

A. Well, I might answer your question this way: That there might be a job for the construction of a highway, or a bridge or a power plant or a water diversion or a public building that the Riverside Company might secure, finally, the contract. When that contract is received they file with us a statement showing the name of the purchaser, the location of the job, the description of the job, and the number of barrels of cement involved.

Q. Does the report include the price?

A. No, no prices are reported.

Q. Do they make a separate report on each contract or do they make a monthly report for all contracts during the month?

A. No, the contracts are reported as they are received.

Q. Is each contract reported individually?

A. Individually.

Q. Do all members of the Institute cooperate with you in submitting those reports?

A. The Southern California cement manufacturers make such reports. The other members, San Francisco, Portland, and Seattle, do not.

Q. What use do you make of those?

A. We consolidate the reports as they are re-
9146 ceived in alphabetical station order, and we return them to the cement manufacturers giving the gist as I have just explained to you, without comment.

The Witness: I don't know what use they make of them. This is information that has all been approved by the United States Supreme Court in the case of the Ce-
9147 ment Protective Manufacturers case, maple flooring case, sugar case, and other cases.

9148 Q. Were you the man who conceived the idea of this Institute here?

A. No, sir.

Q. Who did?

A. I don't know.

Q. Where did you first hear of it?

A. I heard about it in the latter part of 1936 when I was invited to come down here and I was offered a job.

I was employed August 1.

Q. Who invited you down?

A. I was invited down by E. E. Duque.

Q. Do you know Mr. Duque's position?

A. Mr. Duque is the chief executive officer of the California Portland Cement Company at Los Angeles.

9150 Q. What companies were the charter members of this Pacific Coast Cement Institute?

A. The California Portland Cement Company, the Monolith Portland Cement Company, the Riverside Portland Cement Company, and the Southwestern Portland Cement Company; their general offices were located at Los Angeles at that time.

Q. Can you give me the rest of the membership, approximately, in the order in which they became members?

A. Well, I couldn't do that offhand. I could secure that information for you.

9151 Q. Could you give me the rest of the membership?

A. I might say in a general way, the Superior Cement Company joined in December, 1936; the Pacific Cement Company, June, 1937, and Santa Cruz, September, 1937, and the other companies all joined in between.

Q. Were all the companies on the Pacific coast members?

A. Companies west of the Sierra Nevada mountains and the Cascade mountains, with the exception of the Cowell Company and the Northwest Portland Cement Company at Grotto, Washington.

Q. Is the Olympic Portland Cement Company a member?

A. Yes, sir.

9152 Q. Have you ever heard of the Portland Cement Association?

A. Yes, sir.

Q. Do you know anything about its duties?

A. In a general way.

Q. Does it promote the sale of cement?

A. It doesn't promote the sale of cement; it promotes the use of cement in competition with asphalt, lumber, brick, and other competitive commodities. They are purely a promotional association.

Q. Would you say that they cover the field very thoroughly?

A. I think so. I think they have done a splendid job

Q. What does that leave for your Institute to do?

A. The scope of the work of the Pacific Coast Cement Institute and the Portland Cement Association is entirely different. They have no connection in any respect
9153 with one another.

9156 Q. —what service you render which takes the most time in your office, absorbs the greatest proportion of your energies?

A. Oh, I couldn't answer that. My services or my time is taken up generally securing statistical data, both States and national and federal, which be of interest to—

Q. How many assistants do you have, Mr. Keller?

A. I have one.

Q. Is he a freight rate expert?

A. No, sir; this is a she, a stenographer.

9166 Q. Do you know whether the Cement Institute—not the Pacific Coast, but the other Cement Institute —collects and disseminates information based upon the Bureau of Mines' calculations?

A. I don't know.

Q. Do you receive the Cement Institute's service?

A. No, sir.

Q. I believe you said the Pacific Portland Cement
9167 Company was a member of the Institute while you were on officer of it.

A. I beg your pardon?.

9168 Q. I believe you said that the Pacific Portland Cement Company was a member of the Cement Institute while you were an officer of it?

A. I said we were required to join the Cement Institute to secure the benefits of the codes in the latter part of 1933. Whether they are a member at the present time or not I don't know.

Q. Did you receive a statistical service from them at that time?

A. No, sir.

Q. Do you know whether the members of your Institute or the Pacific Coast Cement Institute are also members of the Cement Institute?

A. No, sir; I don't know.

Q. Have you ever submitted a bid on a federal project where land-grant rates were involved?

Mr. Davis: I take it that means Pacific?

Mr. Paulson: At any time in the last nine years?

A. No, we undoubtedly—what are you talking about now, the Pacific Portland Cement Company or the Pacific coast Cement Institute?

By Mr. Paulson:

Q. I am asking you if you can put it into whichever service it belongs in.

Examiner Norwood: He asked if you ever did that.

9169 Mr. Zimmerman: Individually.

The Witness: Never individually.

By Mr. Paulson:

Q. As an officer of the Pacific Portland Cement Company, did you submit a bid to the Federal Government?

A. Undoubtedly during the time I was associated with the Pacific Portland Cement Company, we submitted bids to the Federal Government.

Q. Do you remember whether you did positively or not? I am trying to find out, Mr. Keller, whether you are familiar with bidding on federal projects where land-grant rates are involved?

A. If you will refresh my mind of some of these projects referred to, I will answer. I will say this offhand: Everybody knows that the Pacific Portland Cement Company sells cement to the Federal Government like every other company in America.

Q. Well, I don't have the information before me, Mr. Keller, as to any particular project that you might have bid on, but we do want it for the record to get the benefit of your experience as a bidder.

A. I haven't been associated with the Pacific Portland Cement Company for four years, and my memory is not clear on what the bids were, but I will say we sold cement to the Federal Government.

9170 Q. How would you make up a bid on a request for land-grant rates—where land-grant rates were involved?

Mr. Leisure: I think we should confine the testimony to facts as to whether he did and how he did it,—if he did it; and it first should appear that he did do it before he is asked the question.

Examiner Norwood: Didn't he say he did?

Mr. Leisure: I don't so understand.

Mr. Paulson: That is what I understood him to say: "Undoubtedly"; he said.

Examiner Norwood: Tell us whether you said so or not.

The Witness: I said that undoubtedly the Pacific Portland Cement Company sold cement.

Examiner Norwood: Yes.

The Witness: From time to time to the Federal Government, but how we made our bids up I haven't been associated with them, Mr. Examiner, for over four years, and I am not familiar with the details of how we did it,

9171 or how we didn't do it.

Examiner Norwood: You can't tell us how you did it?

The Witness: No, sir.

Examiner Norwood: It has escaped your memory entirely, has it?

The Witness: We sell cement to the Federal Government, to the best of my recollection and ability, the way the bids call for.

Examiner Norwood: Yes.

The Witness: If it was called for at the mill, we quoted them at the mill; if it was called for at destination, we quoted them at destination.

Examiner Norwood: Yes.

9172 Q. Mr. Keller, is that your signature (indicating)?

A. This here (indicating)

Q. Yes.

A. Yes.

Q. What is that you have in your hand?

A. Do you want me to read the letter?

Q. Is it affixed to the letter?

A. Well, it is apparently a letter under date of September 29, 1936, to C. R. Boyer, the traffic manager of the Southwestern Cement Company.

Q. Do you recognize that as being a photostatic copy of your letter to Mr. Boyer?

A. Oh, I would assume that was the letter I wrote without reading it all over. My name is on it. My name is on there. I recognize my own signature.

Mr. Paulson: For the sake of the record, I should announce this document which I have just shown to Mr. Keller is marked for identification "Commission's Exhibit 564-RRR."

I offer it for the record.

9173 Mr. Paulson: Is there any objection? There is an exhibit pending, I believe.

Examiner Norwood: Yes. Any objection to the exhibit?

Mr. Leisure: May I ask the witness a question before making an objection, Your Honor?

Examiner Norwood: Certainly.

Mr. Leisure: Mr. Keller, on the 563-RRR, do I understand that this is a letter that was written by you?

The Witness: Is that the one I looked at?

Mr. Leisure: Yes.

The Witness: Yes.

Mr. Leisure: I note that it is dated September 29, 1936, and it has a letterhead, "The Cement Institute, Southern California Division." Were you in any wise connected with the Cement Institute on the date of that letter?

The Witness: No, sir. May I explain the reason of this letter, this letterhead?

Examiner Norwood: Wait a moment. I think that
9174 all that should come when the paper has been received in evidence.

Mr. Leisure: I wanted it primarily as to the heading, Your Honor, before I stated my objection.

I notice it has—

Examiner Norwood: He may explain the heading.

Mr. Leisure: Will you explain the heading, please, so that I may state my objection?

The Witness: The heading reads, "The Cement Institute, Southern California Division."

Mr. Leisure: Explain it, please. Was that the title of your office at that time?

The Witness: No, sir; the Pacific Coast Cement Institute was incorporated on September 21, 1936, and I had some stationery on hand with the Cement Institute form, and our president authorized me to use it up on the freight quotations as it only went to the four Southern California members. In other words, this was a fictitious name, so far as we were concerned.

Mr. Leisure: Will you tell the Examiner how you happened to have such stationery as that at all?

The Witness: The Southern California Cement Manufacturers filed an application with the Cement Institute requesting them to open up a branch office in Southern
California, and at a meeting of the trustees on Sep-
9175 tember 10, 1936, the application was withdrawn for the reason as explained to us that the Cement Institute was abandoning all their branch offices, and it was

then recommended and approved by the Southern California cement manufacturers that we would incorporate under the laws of the State of California a non-profit corporation to be called the Pacific Coast Cement Institute, and during the time from September 10th up to the latter part of September it was necessary to present the matter to our lawyers and they in turn had to draw up the articles of incorporation, by-laws, and all the other things to make it legal, and these papers had to be sent to the Secretary of State at Sacramento, the commission of incorporation at Sacramento for approval. That is about 420 miles from Los Angeles, and there was two or three weeks to require all these legal difficulties, or whatever you might call them, to be overcome so that we were a corporation within the spirit of the law of the State of California.

That is how the Pacific Coast Cement Institute happened to be formed, and, as I say, we had a few of these letter forms that we used up on freight quotations.

9177 Examiner Norwood: There is testimony in here connecting this witness with certain of the Respondents and an organization to which certain of the Respondents belong and connecting these activities, tending to connect them with the Cement Institute, and I think this exhibit should be received for application to any of the Respondents that the entire record may connect it up with, so the objections are overruled, and the paper is

9178 received as Commission's Exhibit 564-RRR.

(COM. EX. 564-RRR, was offered and received in evidence.)

By Mr. Paulson:

Q. Mr. Keller, who is president of the Pacific Coast Cement Institute?

A. The present president is Frank H. Powell.

Q. What is his connection in the industry?

A. He is president of the Southwestern Portland Cement Company.

Q. Who was president when you were first employed?

A. We had no president. They were organizing at that time, and as the organization was completed the first president elected was Mr. E. E. Duque.

Q. Who was it that contacted you with regard to employment?

A. Mr. E. E. Duque.

9179 Q. What was said to you when you were approached with regard to taking over these new duties; in a brief way?

A. Well, I don't remember just what was said.

Q. Can you tell me how your duties were outlined to you?

Mr. Davis: Objected to as not the best evidence.

By Mr. Paulson:

Q. Was anything said in regard to you dealing with land-grant rates?

A. No, sir.

Q. Was anything said that part of your duties would be to secure land-grant rates and relay them to various members of the Institute?

A. No, sir.

Q. Was any question asked you whether you were a traffic man?

A. No, sir.

Q. Do you recall the conversation that took place when you were first approached regarding the position?

A. Oh, I think one day Mr. Duque's phoned to me at San Francisco and said, "If you have nothing to do come down here, I would like to have a visit with you," 9180 and he rather outlined in a general way what he thought the Southern California companies would like to accomplish, and I told him I would go home and think about it.

Q. What was that that they would like to accomplish?

A. That they would like to have the Cement Institute open a branch office in Los Angeles.

Q. And accomplish what?

A. And handle in Los Angeles the details and general information in a similar way as the Chicago office, and these other branch offices were handling it in the United States.

Q. Any special reference given to the question of securing land-grant rate information?

A. I don't think I ever discussed with Mr. Duque land-grant rate information.

Q. Did you discuss it with anyone else?

Mr. Leisure: May we have the time fixed, and—

Mr. Paulson: Wait until we find out, please, if he discussed it with anyone, first.

Mr. Leisure: I object to the question as being incom-

petent, irrelevant, and immaterial; discussions which this witness may have had about land-grant rates prior to the time he became association with the Pacific Coast Cement Institute or with some Respondents in this case. It certainly is not material.

Examiner Norwood: Objection overruled.

9181 A. No, sir.

Q. Was your employment and your duties subject to a conversation with Mr. Beckett, of the Riverside Company?

A. I think—of course I am speaking from memory now, and my recollection,—the best of my belief and memory is that all my discussions about my coming to Southern California and handling Pacific Coast Cement Institute prior to its organization were with Mr. Duque.

9182 Q. After having assumed your duties, did you have a conference with the traffic men in the various cement companies which were members?

A. I don't recollect of ever having any conference with the traffic men.

Q. Did you meet with them individually?

A. No, sir.

Q. Have you ever met with the traffic men individually?

A. No, sir.

Q. Do you know the traffic managers of these four Southern California companies?

A. No, sir.

Q. You don't know them personally; you have never met them?

A. No, sir, with the exception, I have met Mr. Boyer of the Southwestern; he is the traffic manager, but not the other companies.

Q. This letter which is now Commission's Exhibit 564-3R, did you dictate that unassisted by clerical help except stenographic, of course, Mr. Keller?

A. No, I turned this letter over to the young lady. This was a letter that had come from the assistant—

9183 this was a letter received from Mr. C. K. Adams, assistant general freight agent of Santa Fe Railroad. There is an error here; this says "Southern Pacific." This file number—

Q. Never mind reading it. I intend to do that, Mr. Keller. What I am anxious to find out, Mr. Keller, is whether or not this received your personal attention; whether it came in the course of your duties?

A. The letter came into my office and I told the young lady to copy it verbatim and send it on to the cement companies.

Q. That was a normal part of your duties, was it?

A. Yes, sir.

Q. Mr. Keller, does this mean that copies of that were sent to Mr. Dartt, Mr. Warren Leonard, and Mr. Robert Soldini?

A. Mr. Soldini is, as I understand it, the sales
9184 manager of the Monolith Portland Cement Company.

Q. Who is Mr. Warren Leonard?

A. Mr. Warren Leonard is the sales manager, or was at that time, of the Riverside Cement Company.

Q. Who is Mr. J. L. Dartt?

A. Mr. J. L. Dartt was the sales manager of the California Portland Cement, as I understood his capacity.

Q. Was the government asking for bids on cement at Phoenix at that time?

A. You would have to connect up the balance of the correspondence to refresh my memory on it.

Q. Do you think so?

A. I beg your pardon?

Q. Do you think that the government was asking for cement? Is that what would have occasioned your getting this information?

A. Undoubtedly—

Q. You don't just get information at random. You got it when there was a project in prospect?

A. I think it was the Bartlett Dam.

Q. Are these the prospective bidders on this project; these companies with whom Mr. Dartt, Soldini, and Mr. Leonard are connected? Were they the sole bidders on that job?

A. As to that, I don't know. There might have been other bidders.

9185 Q. Showing you Commission's exhibit marked for identification 564-2R, Mr. Keller. Is that your signature?

A. Do you want me to look at just the signature?

Q. Yes, sir, please.

A. Just the signature?

Q. Yes, sir.

A. That is my signature.

Q. Do you recognize the letter as one you have written?

A. Can't I be permitted to read it?

Q. Yes.

A. How can I recognize it if I don't read it?

Q. That is right; just read a sufficient portion of it to identify it.

A. There is a lot of data on this letter that never come from me; you understand that.

Examiner Norwood: Is that penciled or written data?

The Witness: There is a lot of stuff on here that I won't be responsible for.

By Mr. Paulson:

Q. The typewritten part; the body of the letter?

A. For example, this on the margin here; that never came out of my office and they have something over here and here and there (indicating).

9186 Examiner Norwood: You mean written on the margin?

The Witness: As far as the typewritten part of it, why, it comes from my office. I will hold no responsibility for the balance of it.

Mr. Paulson: I offer it.

Mr. Leisure: On behalf of the Cement Institute, Your Honor, and the Respondents we represent, I object to the exhibit. Anything Mr. Keller may have written is not binding upon the Cement Institute unless there is some showing that he was authorized to act on its behalf. I object as incompetent, irrelevant, and immaterial.

Examiner Norwood: Any further objection?

(No response.)

Examiner Norwood: Received as marked.

(COM. EX. 564-RR, was offered and received in evidence.)

Q. This letter begins, Mr. Keller: "As per your request date, the Santa Fe Railway Company advise that the following are the commercial and approximate land-grant rates from various shipping points to Earp, California."

It is addressed to Mr. A. D. Fargher, assistant to the sales manager, Southwestern Portland Cement Company. Had you received a request from him for land-grant rate information?

9187 A. Undoubtedly.

Q. Was that the—

A. If you will let me look at the letter to refresh my memory, I could answer the question better.

Q. Let me ask you another letter first, please.

Was it a common thing for you to receive requests from various cement companies for land-grant rate information?

A. Yes, sir.

9188 Q. Did you supply land-grant rates on every Government letting, to the best of your knowledge?

A. I don't know.

Q. Did you attempt to?

A. The land-grant rates were furnished upon the request of the different Southern California cement companies. Whether they covered them all or a part of them, I can't answer that.

Q. Did you have contact with the various purchasing agencies with a view as to when there would be a letting and where the project was on which the letting would be?

A. I had no personal contact with the Government agencies. A review of the Congressional Record would cover the appropriations by the different departments as to a project.

9189 Q. Was it a part of your service to your membership to supply information, different information, as to projects?

A. No, sir. The freight rates were secured and passed on to the cement companies for what they were worth, from the railroad companies.

Q. I notice in the body of this letter, Commission's Exhibit 564-RR, a compilation of commercial and land-grant rates from Colton, Crestmore, Cowell, Davenport, Kentucky House, Merced, Monolith, Redwood City, Stockton, Victorville, and El Paso, Texas. Is that the common procedure that you followed in supplying information; namely, to set forth commercial and opposite that land-grant rates, applying from all points freight-wise adjacent to the project?

9190 The Witness: I don't understand that term "freight wise."

By Mr. Paulson:

Q. Well, by "freight wise" I mean those geographically located so as to be in a position to reach that destination and sell cement.

A. I might answer your question in this way, that we furnish the cement rates, or we furnish the cement rates

from the points that might be adjacent to a job and to points that are suggested to a more or less extent by the party making the request for them.

Q. Wasn't that the main purpose of this Institute?

A. No, sir.

Q. To begin with?

A. Absolutely no.

Q. It says, going on in the letter: "The Santa Fe informed us under date of October 9 that they advised the United States Bureau of Reclamation on that date that they would protect from Colton, Riverside, Victor-
9191 ville, and Monolith to Earp, California, a rate of 15 cents per hundred pounds on cement destined to Earp on account of the Parker Dam when moving on government bills of lading subject to minimum weights when moving in bulk of 80,000 pounds and in sacks 75,000 pounds."

Would you say the calculation of land grant rates was a very difficult involved matter?

A. Well, that is not a land grant rate; that is a special government rate.

Q. Would you say that securing information on these special or government rates is a tremendously difficult matter?

A. I wouldn't say so, no, sir.

Q. Would you think that if acting independently any two or any four individuals, whether they be cement or any other industrial men, could arrive at the same land grant rates?

A. Well, in this particular case, they couldn't arrive at it unless they went to the railroad to find out. Here was a case where the Santa Fe Railway had published from the Southern California mills to Earp, California, a rate of 15 cents per hundred pounds, which was to expire on such and such a date. And this party that wrote this letter wanted me to develop if this particular rate would be extended. Now, I did present the matter to the Santa Fe Railway. The railroad in Los Angeles has no authority, and they had to take the matter up with the general
9192 offices at San Francisco, and I think it says it was extended to—what is it? June, 1937? Or June, 19—

Q. Yes.

A. What is the date there? June—

Q. It is encircled and says "See memo."

A. I don't know who put the circle there.

Q. "1937," is what you stated in your letter (indicating). Is that right?

A. Let's you and I get straight, brother. All these circles and additions and pencil memorandums, I had nothing to do with.

The rate was to expire June 30, 1937, and under date of March 15, 1937, Mr. Fargher wanted to know if the rate would expire on that date. This was a special government rate which was lower than the land grant rate indicated above. I presented the matter to the traffic people of the Santa Fe Railway here, and they had to present the matter to the general offices in San Francisco, and they came back and said that the rate would be extended to 1938. Now, that is the only interest I had in the matter. In other words, I was a messenger boy.

9194 Mr. Paulson: Now, at this time, Your Honor, I would like to withdraw Mr. Keller and call Mr. Beckett.

Mr. Leisure: No objection.

Mr. Paulson: Recall Mr. Beckett.

Examiner Norwood: Off the record.

(There was a discussion off the record.)

GARNER A. BECKETT was thereupon recalled as a witness for the Commission and, having been first duly sworn, testified further as follows:

Direct Examination by Mr. Paulson.

9195 As to whether I recognize any of the penciled notations on Commission's Exhibit 564-RR, the notation to Boardman "Check in about 30 days or April 17, 1937," looks like Mr. Allen's writing. Mr. Allen is our sales manager at this time. Mr. Allen was not, that I know of, under instructions to use this type of information which Mr. Keller was sending out in any way. He sends this to some clerk to calculate that. It is marked

9196 "To Boardman" in what I think is Mr. Allen's writing with an instruction below it. The important thing in this letter is in this paragraph (indicating). The railroad siding of Earp is one of the stations to which

the Metropolitan Water District has been taking delivery of cement, which was purchased from us f.o.b. mill. The Santa Fe Railroad had made available to the metropolitan water district a freight rate,—not a published freight rate, not a commercial freight rate, but what is permitted in California, what they call a municipal freight rate. It is available to political sub-divisions of the State under—I don't know what the law is, but there is some railroad commission law. That rate can be made by the railroad without going through the formality of a hearing by the Railroad Commission. They can arbitrarily make it. I don't know whether this information reached us prior to bidding. I don't know whether there was a bid about this time.

9197 If you will notice, the commercial rate is 25 cents per hundredweight from Colton or Crestmore or Monolith or Victorville. Now, derived from that is a land grant rate which is not uniformly less than 25 cents, but is variably less than the 25 cents and in every case is higher than the special rate which the Santa Fe made available to the Government, and which in each case was again identical with the rate from Victorville, from Crestmore, from Colton. They had constant rates from all four of those mills as a commercial rate,—a constant rate as a municipal rate, but a variable land grant rate, and the land grant rate was higher than the rate which was made available.

Q. Did that information reach you prior to bidding?

A. Well, I don't know when we bid on that job, but I know that the information reached us originally,—

Q. Would it have been of any value to you except
9198 in the event that it reached you prior to bidding?

A. Yes. And that brings up something that I would like to say in correcting my testimony when Mr. MacIntyre was examining me yesterday.

Q. Yes.

A. I was intending to bring in just this question of the special municipal rates on the large public jobs.

Q. Well, you said, yes, that would be of some value to you—

Mr. Zimmerman: May we let the witness finish his answer, if the Examiner please, so that we can get some information about this thing?

Mr. Paulson: Well, he is correcting some testimony of the other day and diverting from this specific subject.

Examiner Norwood: Yes.

Mr. Paulson: And the order would be bad as far as clarity is concerned.

By Mr. Paulson:

Q. I would like to know what value that information would be to you after bidding takes place?

A. After bidding takes place?

Q. Yes.

A. Well, I think there were successive biddings for delivery at that point.

Q. But is it any value to you after the bid has
9199 taken place? Is it of any value, in other words, except as an aid to bidding?

A. Well, it is of value to check whether the rates which we assumed would be the available rate in figuring our destination cost.

Q. So that you will know how to bid?

A. From which we guessed our mill base—our mill price, rather, as to whether that was actually the rate or not. Yes, it would be of value to us after bidding if the rate had not been theretofore published, because it might tell us whether we were the low bidder or not.

Q. Or how to bid the next time, isn't that right?

A. Well, are you answering or am I? Please. It would tell us whether we were the low bidder.

We know that the Government is going to award on a destination cost, which is made up of two things, freight and the price of cement at the mill. Now, where we had bid, and we did in some cases not knowing the freight, guessing at the freight—that is the testimony that I gave yesterday that I want to correct—we didn't estimate—I think Mr. MacIntyre called it the Government destination price—in this land-grant way. We estimated it based on what we thought the rate, the new municipal rate would be. It was of value to us, therefore, after our mill bid was in, made without knowledge of what the municipal rate would be, to determine what the municipal rate
9200 was, because that determined who the low bidder was.

Q. Yes, I can understand that.

A. The low bidder was in the hands of the railroads, in other words.

Q. This is a State instance, and in an out-of-the-State instance, an out-of-the-State letting, Mr. Beckett, say, a letting at Phoenix by the reclamation division—

A. Identically the same situation, sir.

Q. What is your procedure in preparing your Government bid?

A. Well, on many of those lettings, practically all of the large lettings out here in this queer district of ours, they have had a regular—

Q. Well, let's not generalize.

Mr. Works: Now, please. May Counsel refrain from interrupting the witness? I think we have been quite patient. The witness is trying to give him the information that he wants.

Examiner Norwood: I think they are getting along very well.

The Witness: I think we can get along all right.

Mr. Works: Go ahead, Mr. Beckett.

The Witness: The big jobs that we have had here, the Metropolitan Aqueduct, the Boulder Dam, the Bartlett Dam over in Phoenix, the Parker Dam here near Earp, have all had and all been sold on municipal rates, not 9201 on land-grant rates. That is where Mr. MacIntyre and I got at kind of cross-purposes yesterday. He was thinking about these land-grant rates.

By Mr. Paulson:

Q. They are on quantity, aren't they, those municipal rates, just like land-grant rates are on non-quantity?

A. They are not just alike; they are entirely different.

Q. They are alike in this respect, that they are unlike? Can we agree on that?

A. Well, they are unlike.

Q. I mean, they are unascertainable? That is what I should have said.

Mr. Zimmerman: You don't mean that land-grant rates are unascertainable?

By Mr. Paulson:

Q. The exact land-grant rate is an unascertainable quantity; is that right, Mr. Beckett?

A. I don't know that it is. May I state it in my own way?

Examiner Norwood: Certainly.

By Mr. Paulson:

Q. All right.

A. The land-grant rate is a deduction from the commercial rate, as I understand it, which is figured in accordance with mileage, and the quartermaster general puts out a book that thick (indicating) as to how to do it.

9202 Now, if people can't follow formulas the same way they don't get the same answer.

Q. I am going to have to interrupt you again because we have this in the record, Mr. Beckett. We understand what land-grant rates are, but I am only asking you as to whether or not you wouldn't agree with me, and the testimony is in here, that they are an unascertainable quantity. Land-grant rates are an unascertainable quantity. You don't get a definite land-grant rate until the shipment has been consummated?

Mr. Zimmerman: That is not in the record. The record indicates that in numerous instances the land-grant rates are furnished by the railroads; in numerous instances they are known by previous experience; and there have been occasions and instances where they have been supplied in the invitation.

Examiner Norwood: Well, the record shows for itself. In the meantime Counsel here is trying to put something else on the record.

Mr. Zimmerman: He says that will agree with something in the record so that that must be thus and so.

Mr. Paulson: I will reframe the question.

By Mr. Paulson:

Q. They are generally unascertainable and they are generally approximations?

A. I don't know that. As I understand a land-

9203 grant rate, it is figured from the commercial rate in accordance with a formula. Now, whether everybody gets the precise answer, I don't know.

Q. In your experience—

A. Now, may I answer the other half of the question?

Q. In your experience, have you found it difficult to know exactly the land-grant rates from your mill to any destination?

A. To know exactly from our mill?

Q. Yes, please.

Excuse me. Strike my last remarks. Let him answer the question.

A. Well, I think that there have been some sets of figures that have not agreed, just as two men working out the same formula don't agree.

9204 Q. Now, is this service of any help because of that fact?

A. May I finish the other half of that about the municipal rate?

Q. No. I would like to have you answer my question.

A. It is part of an earlier question, sir.

Examiner Norwood: Answer the question.

By Mr. Paulson:

Q. Is this service of any value to you now?

A. This particular service?

Q. In the light of your last answer.

A. On this particular job or any job?

Q. This service.

A. No; I would not object in the slightest if the service were cut out tomorrow.

Q. Now, that isn't answering the question, Mr. Beckett.

Mr. Zimmerman: He said "No."

Mr. Davis: "No" answers that very thoroughly, I think.

The Witness: No.

By Mr. Paulson:

Q. Can you explain why it is of no value?

A. Presumably because we don't use it to any extent.

Q. What are those calculations on there?

Mr. Davis: I wonder if Counsel and the witness will remember that they are pretty close together and
9205 that we can't hear up here unless the voices are raised?

Examiner Norwood: Yes. If Counsel will get over there.

Mr. Paulson: It is a little bit difficult. I have to watch these papers. I will try to keep my voice up.

Examiner Norwood: Well, talk louder.

Mr. Zimmerman: Talk at the fellows over there at the end.

The Witness: All right, sir.

The calculations on the righthand side?

By Mr. Paulson:

Q. Yes, sir. Does that mean that you have made use of those figures of Mr. Keller's there?

A. No.

Q. Has it had any influence—

Mr. Leisure: There is no evidence that the witness did this figuring, and it should appear first that he did the computation before he is asked to explain the computation.

Examiner Norwood: I don't think so.

Mr. Leisure: He is asking him to explain some one else's figures.

Examiner Norwood: Well, he is asking what these
9206 markings on this letter indicate to him in the light of his office practice, some systematic procedure, and I think that makes it answerable.

A. Yes, I think, as I look down below here, I think we did use these figures. Up here it shows the land grant rate computed into terms of barrels per barrel of bulk cement as .775876. Down below it shows the special municipal rate from Crestmore to the same destination as .564.

By Mr. Paulson:

Q. Now, suppose that your traffic man—

A. Pardon me. I haven't finished.

Q. I am sorry. I thought you had finished.

A. We would naturally use the lowest rate applying from Crestmore to the destination, which in this case was 56 cents per barrel and a fraction, as against a land grant rate of 77 cents and a fraction. That is the value of that to us.

Q. What do you think the other companies would use?

A. Now as to—I beg your pardon?

Q. What do you think—what rate do you think the other companies would use in making a bid on that?

A. They would use—I think they would also use the lowest rate.

Q. Would you all get the same bids, then? You would all get the same bids, then, wouldn't you?

A. I beg your pardon?

9207 Q. Then you would bid identically, would you not?

A. Not necessarily.

Q. Well, if you used—

A. It would depend on what you added the freight rate to the price at the mill.

Q. What did you add it to?

A. We didn't add it to anything. We bid at the mill.

Q. What did you subtract it from?

A. We subtracted it from a price at the destination, which we thought would be the low price.

Q. What reason have you to assume that a certain destination price would be the low price?

A. We had to guess it there.

Q. Do you have a traffic department in the Riverside Cement Company?

A. No, sir.

Q. Do they rely for their information entirely on this service, or the land grant rate information?

A. No, sir; and as a matter of fact, Charley Adams sends me the same information at the same time he sends it to Mr. Keller.

Q. Who is Charley Adams?

A. He is the assistant general freight agent for the Santa Fe Railroad. Charley asked me about sending it to Jimmie—should he send it to the mills, too, and I

9208 said, "I think you should. If you are sending information out, it will save a day."

Q. But this is not information which Charley Adams would have sent. This is something personal, a personal touch here by Mr. Keller. "The Santa Fe informed us under date of October 9 that they advised the United States Bureau of Reclamation on that date that they would protect from Colton, Riverside, Victorville, and Monolith to Earp, California, a rate of 15c per hundred pounds on cement destined to Earp on account of the Parker Dam when moving on government bills of lading subject to minimum weights when moving in bulk of 80,000 pounds and in sacks 75,000 pounds. This rate was to expire June 30, 1937. We notified the interested parties regarding above at that time."

A. "We notified the interested parties."

Q. This letter is by James A. Keller.

Did you receive a letter with that information in it from Santa Fe?

A. I don't remember whether we received a letter or a telephone call.

Q. Is it customary for—

A. It is customary for them to notify us of things of that sort, yes, sir.

Q. Do you know whether it is customary for the railroads to notify each of the other cement companies?

9209 A. Well, I don't know. I could guess.

Q. Were you one of the organizers of the Cement Institute, Mr. Beckett?

A. Yes, sir.

Q. Did this service go in over your protest?

A. Well, that service didn't go in at the beginning.

Q. Well, when it did go in, did it go in over your protest?

Mr. Leisure: Did you mean the Pacific Coast Institute, Mr. Paulson, in your question?

Mr. Paulson: Pacific Coast Institute.

The Witness: I understood it to be the Pacific Coast Institute.

By Mr. Paulson:

Q. Did this go in over your protest when it did go in?

A. No.

Q. You agreed to it?

A. I don't recall agreeing to it.

Q. What value would it have to you?

A. Well, sir—

Q. You are paying for it.

A. It has very little value to us.

Q. You are paying your money for it, are you not?

A. For this?

Q. For this service.

A. Well, not particularly for that service, no.

9210 Q. Partially for this service?

A. If it is one of the things they do, I presume so, but I would have no reason to protest if somebody else wanted it. It was of no particular value to me. I wouldn't protest it.

Q. Suppose you had to bid on Phoenix, Arizona—strike that, please.

Supposing the government invited bids at Phoenix, Arizona, f. o. b. mill. Would you take the time to tell me how your bid would be made up?

Mr. Leisure: Now, Your Honor, I am willing to stay here just as late as Your Honor wants to stay, but I would like to spend my time on bringing out facts rather than suppositions that this witness might indulge in. This is interesting but it really doesn't add to the record as far as

the factual material is concerned. I think we should confine our testimony to bringing out facts as to what happened in the past. I want to object to the last question.

Examiner Norwood: Off the record.

(There was a discussion off the record.)

(The pending question was read.)

9211 A. Well, we would bid f. o. b. mill with the knowledge that the Government was going to award on a destination cost. We would obtain from the railroads the lowest possible applicable freight rate on that business, and I wouldn't make the bid up myself, but it has been our policy for years to give the Government the benefit of any land-grant savings or special rate savings.

By Mr. Paulson:

Q. Supposing, Mr. Beckett, that Mr. Keller had sent you a land-grant rate applicable from your mill to Phoenix, what would you do with that, as is illustrated by this Exhibit 564-RR?

A. You mean the top part of the exhibit?

Q. Yes.

A. The bottom part is the special rate.

Q. Yes, the top part of the exhibit, that is right.

A. We would probably check it with the railroads, I think. I haven't made one of those bids out for a long time.

Q. I was going to ask you: Do you handle this personally, Mr. Beckett?

A. No, sir.

Q. These federal bids?

A. No, sir.

Q. Are you thoroughly familiar with just exactly what does take place?

9212 A. I am thoroughly familiar with the policy of the company, to give you the benefit of the land-grant rates, but not the details, sir.

Examiner Norwood: Now, if you check it with the railroad then you would take the lowest bid, wouldn't you, whichever was lower between the railroad and this other freight table?

The Witness: I think they take whichever one they thought was right.

Examiner Norwood: But in bidding would you use the lower one or not?

The Witness: I can't answer that. I don't know. I haven't been on that for a long time.

By Mr. Paulson:

Q. Who in your organization, Mr. Beckett, is the man that we can ascertain just how this bidding takes place?

A. Mr. Leonard, as sales manager, did it for years.

Q. Mr. Allen?

A. Mr. Leonard, as sales manager, did it for years.

Q. He seemed to disclaim knowledge as to that.

A. How we are doing it now?

Q. He disclaimed an exact knowledge of it.

A. We have no standard way of doing it, sir. That is the difficulty, I think, between us. We sort of muddle through.

Q. Do you think Mr. Allen can help us?

9213 A. I don't know.

Mr. Works: May I make a correction of the record in connection with Mr. Beckett's testimony yesterday? It will take a second. That is referring to page 9030 of the record. This refers to a question by Mr. MacIntyre. Perhaps I had better read it.

Examiner Norwood: All right.

Mr. Works: "Question: Has your company at any time, Mr. Beckett, quoted an f.o.b. mill price on this 40 percent of public bid, that you are talking about, of the cement shipped pursuant of public bid, quoted an f.o.b. price without consideration of the application of land-grant rates or other freight rates which would be involved in the shipments from your mill as well as those from your competitors' mills?"

Your Honor will notice I have referred twice to the word "public bid."

Examiner Norwood: Yes.

Mr. Works: And the words should be "public business." Is that in accordance with your understanding of the question yesterday, Mr. Beckett?

The Witness: Yes, sir; it is. That is in connection with that same testimony that I was trying to clarify in the record, and which I think somewhere along there I said we were—

9214 Mr. Works: Will you clarify it now, please?

Mr. MacIntyre: Mr. Works, that should be "public business" instead of "public bid" in both of those instances.

Mr. Works: Yes, that is what I was suggesting.

Examiner Norwood: Yes; let the correction be made.

Mr. Wooden: Now, Your Honor—

Mr. Works: Pardon me just a second. The witness expressed a desire to clarify his testimony; may he do it now?

Examiner Norwood: I thought the correction did clarify it?

Mr. Works: No, Your Honor.

The Witness: Your Honor, I think my testimony is a little cloudy now. Mr. MacIntyre and I got at cross purposes, he thinking of land-grant rates and I thinking of special municipal rates.

Examiner Norwood: All right.

The Witness: We do take these special municipal rates into consideration, of course, in estimating what the destination price is going to be.

Examiner Norwood: All right.

9215 I received the letter, marked for identification as 1203-SS to VV, inclusive. The writer of that is to me my roommate at college. I believe he is connected with Hercules Cement Company. He was connected with the International or Lone Star prior to being with the Hercules. I think he was connected with the International at the time this letter was written in 1929. They then had a number of subsidiary companies and he was, I think, the vice president and manager of one of the subsidiaries. I have forgotten whether it was the Indiana Company or whether it was the one in Pennsylvania—of the Lone Star of Indiana or the Lone Star of Pennsylvania, one of those.

9216 That is my signature on the paper marked as 1203-B for identification. I wrote it in 1931 to Mr. Treanor.

1299 for identification is a copy of a communication I wrote to Mr. Leonard. The Mr. Bancroft who is referred to in Exhibit 1299 is with the California Portland Cement Company. We were engaged in rail litigation at the time.

9217 Los Angeles, Calif.,
July 21, 1938.

9219 (COM. EX. 1203-SS, 1203-TT, 1203-UU, 1203-VV, 1203-B and 1299 were offered and received in evidence.)

JAMES A. KELLER resumed the stand and testified further as follows:

9220 *Direct Examination (Continued) by Mr. Paulson.*

Q. Mr. Keller, yesterday we talked about contracts. I want to ask you whether or not the members of the Pacific Coast Cement Institute report all contracts or only specific job contracts?

A. The Southern California members of the Pacific Coast Cement Institute report what is termed specific job contracts.

Q. They do not report all contracts?

A. I might put it this way, that I think they report all contracts other than the orders they get from the dealers each day for the stock.

Q. Some of the contracts, then, which are reported, would not fall within the category of the specific job contract?

A. Yes, they are all specific job contracts. Each job reported calls for a specific quantity of cement for a specific purpose.

Q. How do you define a specific job contract?

A. Well, I would define a specific job as a job for the construction, or where cement is used for purposes for the construction of highways, churches, sewers, Y. M. C. A.'s,

9221 or building purposes of all types.

A. You understand, Mr. Paulson, the contract is not filed with the Cement Institute. It is a synopsis of the contract which gives the name of the purchaser, the quantity of cement, and the location of the job. All the details of the contract are on file in the cement company's office.

Mr. Zimmerman: If the Trial Examiner please, may the record show that the witness, in making reference to the "Cement Institute" meant the Pacific Coast Institute?

I am correct about that, Mr. Keller?

Examiner Norwood: Is that correct, Mr. Keller?

The Witness: All my testimony is directed to the Pacific Coast Cement Institute. I have no connection whatever with the Cement Institute.

9226 Q. Now, then, Mr. Keller, who is on the officiary of the Institute at the present time, and when you
9227 are answering will you give the men's position in the companies along with their names?

A. The present president is Frank H. Powell, who resides in Los Angeles, and he is also the president of the Southwestern Portland Cement Company. The vice-president is Mr. Coy Burnett, who resides in Los Angeles, and he is the president of the Monolith Portland Cement Company. The secretary and treasurer is James A. Keller, who resides in Los Angeles, not connected with any cement company. The treasurer is Mr. H. Craigen, who is connected with the firm of Overton, Lamb & Plumlin, lawyers.

The directors are Messrs. Powell and Burnett and also Mr. Uren, the vice-president of the Yosemite Cement Company, whose office is located at San Francisco, and Mr. L. C. Newlands, the president of the Oregon Cement Company, whose office is located in Portland, Oregon, and Mr. E. P. Lucas, the president of the Superior Portland Cement Company, whose office is located in Seattle, Washington.

These five directors, and the present president and vice-president have served since about the middle of last October, 1937.

Does that answer your question?

Q. Are all of the companies doing business in Southern California represented on the Institute Officiary at this time?

9228 Mr. Leisure: May we have an understanding that in all of these questions Counsel is referring to the Pacific Coast Institute, because I think the record may be misleading later.

Examiner Norwood: I think we already have that understanding, that this witness' testimony is confined to his organization here.

Mr. Leisure: Very good.

Examiner Norwood: Except where he specifies otherwise.

Mr. Leisure: If Counsel would specify the Coast Institute, I think it would be better.

Examiner Norwood: Well, maybe so, but I think it has been very clear, and it has been so understood.

Mr. Paulson: Did you hear the last question?

The Witness: Will you repeat it?

(The question was read.)

A. On the Pacific Coast Cement Institute?

Examiner Norwood: Yes.

A. The Riverside Portland Cement Company and the California Portland Cement Company are not represented on the officiary, as I presume you mean by "officiary" the officers and directors?

Q. Yes. Have they been in the past?

A. Yes, sir.

9229 Q. How frequently do the officers of the Pacific Coast Cement Institute meet?

A. As the occasion demands.

Q. During 1937 how many times did the occasion demand?

A. Oh, I can't answer that offhand. I can check it up.

Q. Can you give us an approximation?

A. Oh, I would say half a dozen times.

Q. Maybe more?

A. Maybe more, maybe less.

Q. Did you call the meetings?

A. The meetings were called by—I was instructed to call the meetings by the president.

Q. What were the general topics of discussion at these meetings? Was the subject of Government bidding one of them?

A. No, sir.

Q. Never?

A. No, sir.

Q. Was the subject of land-grant rates one of them?

A. No, sir.

Q. Did you discuss statistics?

A. Yes, sir.

Q. Was that the purpose of each of these meetings, statistics?

A. No, sir.

9230 Q. What have I failed to mention that you might have discussed at those meetings?

A. Well, I might put it in this way: After we received our certificate of incorporation from the Secretary of State of California, and the corporation commissioner, and

the by-laws prepared, it was necessary to have a meeting and have these by-laws ratified, which was done by the four original incorporators, namely, the Southern California Cement manufacturers. And we had subsequent meetings from time to time to approve or reject applications for membership by different cement companies. And the original incorporation papers provided that all meetings should be held at Los Angeles at the office of the corporation, Los Angeles, California, and it was thought after these other companies joined that the by-laws should be amended so that the president could call a meeting, if necessary, at San Francisco, or elsewhere, and it required some meetings to ratify and approve that action, but the majority of our meetings after we got organized were to approve or reject the application for membership. That is what the meetings consisted of, in a general way.

Q. Why is it necessary since your Institute is confining itself principally, as your testimony goes, to the collection and dissemination of these general statistics to have a provision in your by-laws that the president can call meetings immediately?

9233 A. Well, the lawyers prepared our constitution and by-laws, and they provided a provision which I guess is in all by-laws and constitutions of corporations, that somebody must call meetings, and I think possibly, as far as the California law is concerned, there is a provision that the president must call the meetings.

By Mr. Paulson:

Q. Well, the question was why he should be able to call meetings at short notice.

A. Well, I means meetings on notice. I don't mean a meeting over night or anything like that, because some of the directors live in Seattle; it would take them four or five days to get here.

Now, I could get the provision of the by-laws that provides the president with that, which is a legal provision provided in the by-laws by the attorneys to conform with the California laws.

Q. Well, the minutes do provide for annual meetings?

A. Yes, sir.

Q. Do they not?

A. Yes, sir, an annual meeting once a year.

Q. And they were amended at one time to provide for meetings upon notice; is that so?

A. On reasonable notice.

9234 Q. I see.

Mr. Keller, where do you get the land grant rates which you relay to the members of the Pacific Coast Cement Institute?

A. Have you got some rate in mind there in particular, some point?

Examiner Norwood: Now, where do you get those?

The Witness: Upon request we secure for the Southern California members of the Pacific Coast Cement Institute—

Examiner Norwood: Yes.

The Witness: —the land grant rates from various 9235 points of origins to various destinations.

Examiner Norwood: Well, from whom?

The Witness: These rates are—

Examiner Norwood: Wait a minute.

The Witness: These rates are secured from the general offices of the Southern Pacific Railroad, which are located at San Francisco, California, and if it happens to be a Santa Fe point, they have got to wire the auditors at Topeka. Their auditors are located at Topeka. If it happens to be a point on the Union Pacific, why, the matter has to be sent to their general offices at Omaha. And we secure these rates, and we merely pass them on to members for what they are worth.

Q. Do you comment upon the rates or explain them in any way?

A. No, sir.

Q. Showing you Commission's Exhibit marked for identification as 564-32, Mr. Keller, is that you signature (indicating)?

A. Yes, sir, that is my signature. There is a lot of data on this statement that wasn't prepared in our office.

Q. Is that all written by you?

9236 A. Yes, sir.

Q. In connection with your duties as secretary and general manager of the Pacific Coast Cement Institute?

A. This was information received from the Southern Pacific general office at San Francisco, California, under their file number 2-1205-6702, dated December 23, advising the approximate rate to Dome, Arizona.

Q. It was written in the course of your duties?

A. Yes, sir.

Mr. Paulson: I offer this in evidence.

9243 (COM. EX. 564-QQQ was offered and received in evidence.)

By Mr. Paulson:

Q. Is this the language of the railroad letter?

A. Yes, sir.

Q. Why didn't you use quotes?

A. I am not a lawyer. I use commercial languge. If I went to college and studied law I would use the same language you do. If you get down to commercial language we will get along faster.

9244 Mr. Paulson: Has this been received, Yoru Honor?

Examiner Norwood: Yes, QQQ.

Mr. Paulson: I wish to read the last paragraph on the page off the record.

Examiner Norwood: Go ahead, off the record.

Mr. Paulson: In the letter of December 22d.

By Mr. Paulson:

Q. Is that your letter?

A. Where is the letter?

Q. Do you recollect if that is your letter?

A. I don't recollect whether it is or not. If you have it before you I would like to look it over. I can't tell about a letter that I don't have. If you let me have the letter—

Q. Can you refresh your recollection from reading the last paragraph? Can you recollect whether you wrote that to the railroad company, or one that the railroad company wrote to you (handing document to the witness)?

A. All information that we sent to the cement companies in Southern California is information received from the railroad companies, and if this refers to a letter of December 22d, it is a letter that the Southern Pacific Company wrote us—

Q. You are willing to testify, as I understand it, Mr. Keller, that that is quoted verbatim, this paragraph, from a letter written to you by the Southern Pacific Railway Company; is that correct—the last paragraph

9245 on the page? It is not your wording but the wording of the Southern Pacific Railway Company?

A. I would have to see the letter of the Southern Pacific Railroad Company.

Q. I am asking you, specifically?

A. I can't answer that, I would have to see the letter of the Southern Pacific Railroad Company.

Q. You withdraw your statement to Mr. Leisure that it was copied verbatim?

Mr. Leisure: He didn't say it was copied verbatim. He said all the information came from the railroad.

By Mr. Paulson:

Q. Showing you what has been marked for identification 564-XXX, is that your signature?

A. Yes, sir.

Q. Is that a letter you wrote?

A. Yes, sir.

Q. In the regular course of your employment as general manager of the Pacific Coast Cement Institute?

A. With the exception there are a lot of notations on there I am not responsible for.

9246 Mr. Paulson: I offer this for the record.

Examiner Norwood: Which one is that, Mr. Paulson?

Mr. Works: 564-3X.

9247 Mr. Keller: This letter of December 28, 1936, the Southern California cement mills, refers to the Interstate Commerce Commission's refusal of the American Railway Association to the emergency increases on freight rate.

Mr. Leisure: What is the exhibit number on that?

Examiner Norwood: 564-3X.

Mr. Leisure: Yes. You have been referring to 564-3X. Did you say these were commercial or land grant rates?

The Witness: Freight rates.

9248 Mr. Leisure: Did you say they were commercial freight rates, or land-grant rates, which; I didn't hear.

The Witness: I said freight rates.

Mr. Leisure: Yes, but were they emergency or land-grant rates?

The Witness. They were the emergency freight rates which the Interstate Commerce Commission declined to continue.

Mr. Leisure: Oother than the objections we have made, we have no other objections.

(COM. EX. 564-XXX, was offered and received in evidence.)

9249 By Mr. Paulson:

Q. You do, then, Mr. Keller, make some suggestions with regard to the freight rates; is that true?

A. I tried to explain to you, Mr. Paulson, yester-
9250 day, when you asked about the general duties, my general duties or what the scope of the Institute was, I said we were in touch with all Washington bureaus, and I think you will find in that testimony which you had stricken from the record that we were on the mailing list of the Department of Justice, the Comptroller General, the Interstate Commerce Commission, the National Labor Relations Board, Department of Commerce, and others, and as information comes out of the Interstate Commerce Commission pertaining to increases or decreases or hearings or freight rates that might be of interest to the Southern California Cement manufacturers, that information is passed on to them.

Q. Mr. Keller, I have here Commission's Exhibit, for identification, 564-P, R, TTT, UUU, JJ, PPP, C, T, I, AAA, D, G, B, GGG, EEE, ZZ, FFF, CC, V O(?), DD, YY, XX, SS, Z, WWW, WW, S, UU, NN, TT, VV, JJ, VVV, III, KKK (?), LLL, KK, and O(?)—

9251 Q. On Commission's Exhibit, for identification, 564-P, Mr. Keller, I see a writing which would indicate that this was sent—copies of this were sent to certain people. In the interests of saving time, Mr. Keller, I am anxious to determine whether you will state that copies of each of these exhibits did go to the men whose names appear on the face of the exhibit as indicating that they had gone there?

(Documents were handed to the witness.)

Mr. Paulson: Off the record.

Examiner Norwood: Off the record.

(There was a discussion off the record.)

Mr. Leisure: We will stipulate that these papers were sent to the people as shown on the exhibits.

Mr. Davis: It was his general practice to mail them to the ones addressed, in those instances where the letters are addressed to more than one.

The Witness: Yes, but I am not going to agree to that until I see whether I wrote these letters.

Mr. Leisure: You don't have to agree to it, Mr.

9252 Keller. We are stipulating.

Mr. Paulson: Will Counsel stipulate these are letters written by Mr. Keller?

Mr. Wooden: It is stipulated, as I understand it, Your Honor, that all these papers were sent to the four Southern California companies whose names appear as addressees.

Mr. Davis: Not quite, Mr. Wooden. That in those instances where the letters are addressed to the four companies that it was his practice to mail it to those to whom it was addressed.

Examiner Norwood: That is the understanding.

9253 The Witness: These are letters that were mailed from my office, with the exception that there are a lot of notations on here that I am not responsible for.

Mr. Leisure: They are not identifying that.

Before these are received, I want to object to all the Keller exhibits received this morning on the ground they are incompetent, irrelevant, and immaterial; the witness' testimony already having shown that he is no way connected with the Cement Institute, and was not connected with it at the time of these writings. Therefore, letters written by him are not binding on the other Respondents any more than letters written by any other third party. His Association is not named in the complaint and he is not made a party defendant. Therefore, any letters he may or may not have written might have to do with some separate alleged conspiracy, but it has nothing to do with the alleged conspiracy in the pleadings. Therefore, it is not material.

Mr. Davis: Mr. Leisure's last statement covered the objections as to relevancy that I wanted to refer to.

Mr. Paulson: Since Your Honor has passed on the objections so many times before, I will not comment on it.

9254 Examiner Norwood: You are proffering these papers under Exhibit No. 564?

Mr. Paulson: That is correct, Your Honor, and the handwriting on this series of exhibits is proffered along with the exhibit proper, it having been identified by Mr. Leonard yesterday.

Mr. Works: By that you mean the extent to which it was testified yesterday, and no further?

Mr. Paulson: Yes.

Examiner Norwood: Yes. The Court might find it was identified somewhere else in the record, or it may be, later.

Mr. Davis: My objection to the handwriting applies to this offer.

Examiner Norwood: Certainly.

Are there any further objections?

(No response.)

Examiner Norwood: I shall overrule and receive these exhibits as marked.

Off the record.

(There was a discussion off the record.)

(COM. EX. 564-P, 564-R, 564-TTT, 564-UUU, 564-JJ, 564-PPP, 564-C, 564-T, 564-I, 564-AAA, 564-D, 564-G,
9255 564-B, 564-GGG, 564-EEE, 564-ZZ, 564-FFF, 564-CC, 564-V, 564-Q, 564-DD, 564-YY, 564-XX, 564-SS, 564-Z, 564-WWW, 564-WW, 564-S, 564-UU, 564-NN, 564-TT, 564-VV, 564-JJJ, 564-VVV, 564-III, 564-KKK, 564-LLL, 564-KK, 564-O was offered and received in evidence.)

By Mr. Wooden:

Q. Mr. Keller, did you hear Mr. Casto's testimony yesterday with regard to the paper I show you marked Exhibit 1213-A and B, for identification?

A. Would you read his testimony? I don't recall his testimony, Mr. Wooden.

Q. I don't have it available, but he testified, in
9256 substance, that he had obtained, the paper of which that is the copy, from Mr. Gay of San Francisco, and Mr. Gay informed him he had received it in the mail from you.

A. Mr. Casto made that statement to you?

Q. Yes.

A. I will accept Mr. Casto's statement.

Q. From whom or where did you obtain the paper, of which that is a copy?

A. Do you mind if I peruse this?

Q. No.

(Witness examines document.)

A. Well, that is information that I gathered in the course of my cement career from various Government sources, public sources, press releases, trade magazines, and other sources.

Q. What were the other sources? Did you obtain some of the information direct from companies?

A. I might have had some of the companies check this.

For example, the first station here is North Hampton, Pa. When the War Trade Industries Board, in 1917 and 1918, fixed prices for the cement industry throughout the United States, they fixed prices at some 38 stations. One of the stations was North Hampton, Pa. The New York Trust Company, New York, publishes monthly—or used to publish monthly,—now they publish it quarterly,—a review of general business conditions and price trends, and in
9257 their price trends they cover prices on some fifteen commodities such as cement, steel, rubber, cotton, etcetera, and the first commodity on the list is the cement price at North Hampton, Pa.

The Government, in the cement inquiry of 1932, also published some fifteen or twenty price-making points, and in Senate Document 71 presented to Congress in June, 1933, they have some 66 points—

Q. Didn't you get some of that information direct from the companies?

A. Certainly I did.

Q. How often were you accustomed to get such information?

Mr. Zimmerman: Which information?

Mr. Wooden: As contained in this list, 1213-A and B.

A. As an illustration—

9258 Q. Answer the question, please.

Examiner Norwood: I would appreciate it if you would answer it as directly as you can.

The Witness: My dear sir, I am trying to cooperate with an officer of the Federal Trade Commission—

Examiner Norwood: Just cooperate with me by answering the question.

A. The information was obtained largely verbally.

By Mr. Wooden:

Q. How often, I asked you.

A. As occasion demanded.

Q. How often was that?

A. Very rarely.

Q. You say you got some of it verbally? From whom?

A. Well, I got a price down here at El Paso, Texas. That information was secured from the Southwestern Portland Cement Company, who have a plant at El Paso, Texas.

Q. Verbally?

A. Verbally. Their offices are in Los Angeles.

9260 Q. Where did you get the information on this list for Bettcher, Colorado?

A. I got it from—I got it from the sales manager of the Monolith Cement Company. They have a plant at Laramie, Wyoming, which is near Bettcher, Colorado.

Q. Where did you get the information for Rapid City, South Dakota?

A. I don't remember.

Q. Where did you get this information about Michigan State flat zone price?

A. Got that out of the Engineering News, as I recollect it.

Q. Where did you get the information for these Washington mills?

A. I think I got them from the Superior Cement Company.

Q. Where did you get this information about the switching district in Hamilton County and Kentucky points
9261 and the Cincinnati switching district?

A. I think that was in one of the bulletins, one of the issues of the Engineering News. In addition to covering the Engineering News—in addition to covering the maximum mill prices on cement, it also covered comments of the ups and downs of cement and where prices had changed in different districts.

Q. Did you find there any information about the switching rates, or the minimum freight rates?

A. I don't remember.

Q. Where did you get that information?

A. As I say, I think it come out of these comments in the Engineering News.

Q. You are not sure of that, however?

A. No, not positive.

Q. You are not sure when any engineering record carried any such information?

A. I am not positive. They carry a lot of information over a period of time which is of value to the cement manufacturers or people interested in the trend of prices.

Q. Where did you get this information on the City of New Orleans?

A. I think that come out of the Senate Document No. 71.

Q. What is that?

A. I think that come out of 71.

9262 Q. What is 71?

A. Senate Document 71?

Q. Yes.

A. Senate Document 71 is a report of the Federal Trade Commission to the Senate of the United States.

Q. Published three or four years before the date of this list?

A. Yes, sir.

Q. And you were using that information, were you?

A. Checking it against the current survey of business and also the cement prices that were published in the engineering news.

Q. How did you happen to send that list to Mr. Gay?

A. Well, we were sending, or at least, I was sending information to Mr. Gay about the activities of the cement institute, the general activities, and I thought that might be of information to him, the general trend of business conditions in the United States as related to cement.

Q. Were you sending it to members of your organization?

9263 A. I sent it out once.

By Mr. Wooden:

Q. What?

A. I sent it out once, June—not June, January 2, 1937, and the matter appealed to me at that time for the reason that the Wall Street Journal had previously covered some prices that were established at the ports, and I think that you will find on the bottom of that list—you will find three or four prices released through the Wall Street Journal on cement, if I am not mistaken.

Mr. Wooden: I will offer it.

9264 Mr. Leisure: Did you send this out regularly or is this just one instance?

The Witness: I just send it out, I think the date is December 31 to January 2, 1937, just sent once.

9265 (COM. EX. 1213-A and 1213-B was offered and received in evidence.).

9266 ELLA SCOTT, called as a witness on behalf of the Commission, being first duly sworn, testified as follows:

9267 *Direct Examination by Mr. MacIntyre.*

I am secretary to the president of the Riverside Cement Company and have held that position for about 13 years. Mr. John Treanor and Mr. Garner A. Beckett have been the presidents during that period. Mr. Treanor was president for about 10 years, up until October 1935 I believe, when I served him as secretary. I have served as secretary to Mr. Beckett since he was made president of the company. I served as an officer of the company, as-
9268 sistant secretary, for a short time, I don't remember how long, in addition to and concurrent with my duties as secretary to the president. I really do not recall the approximate dates and periods that my duties as assistant secretary covered.

9268 Q. Miss Scott, I am showing you documents which have been marked for identification as Commission's Exhibits 970-15A and -15B, and I will ask you to state whether or not that is Mr. John Treanor's signature at the end of the letter on 870-15-B?

A. Yes.

Q. Do you recognize the letter as one with which you had anything to do?

A. Well, it has my initials on the bottom, but I really don't recall writing it.

Mr. Works: I will stipulate that she typed it.

Mr. MacIntyre: You are willing to stipulate that
9269 she typed it.

Q. Miss Scott, I am showing you documents which have been marked for identification as Commission's Exhibits 937-D and -E.

Mr. Leisure: Those are in evidence, aren't they, Mr. MacIntyre?

Mr. MacIntyre: Well, they have been identified as Commission's Exhibits 937—

Mr. Leisure: Yes, but they are exhibits, aren't they?

Mr. MacIntyre: They are documents that are marked for identification as Commission's Exhibits 937-D and -E.

By Mr. MacIntyre:

Q. And I ask you to state whether or not you have any recollection whether that is a letter received by your office when you were serving Mr. Treanor as secretary?

Examiner Norwood: Off the record.

(There was a discussion off the record.)

A. I don't recall.

Q. You don't recall of having filed that for Mr. Treanor?

A. No.

9270 Q. Showing you a document marked for identification as Commission's Exhibit 562-14R, I ask you to state whether or not you recall having filed this as a document received in your office; that is, the original of that of which this is a photostat?

9271 Mr. Works: The question is whether she filed it?

Mr. MacIntyre: Filed it or received it or knows anything else about it.

Mr. Leisure: Again, that is an exhibit, isn't it, Mr. MacIntyre?

Mr. Works: I think they all are.

Mr. MacIntyre: I think that is true. I think all that we are showing her at this time are exhibits in evidence as having been produced under subpoena duces tecum.

Mr. Leisure: And are they copies of the originals that were returned to Riverside—that you returned to us and which we returned to Riverside?

Mr. MacIntyre: Those bearing the Exhibit No. 562 are from the Riverside files produced by the Riverside Company under subpoena. The originals are in evidence. These are photostats of those in evidence.

Mr. Works: You don't mean to imply that all of the documents which you are showing the witness came out of the files of the Riverside Cement Company?

Mr. MacIntyre: Those with the number 562.

Mr. Works: Correct.

Mr. MacIntyre: All came from the Riverside files.

Mr. Works: Correct.

A. I don't recall that one, myself.

9272 By Mr. MacIntyre:

Q. You do not recall of having seen, received, or filed a memorandum of the substance of a telephone conversation between John Treanor and Dr. Morgan, under date of September 29, 1934?

A. No, sir; I do not.
Q. And filed for Mr. Treanor?
A. No.
Q. I am showing you a document marked for identification as Commission's Exhibit 562-14-V, and ask you to state whether or not you recall that, or anything concerning it?
A. No, I don't really recall it. It has our file number on it.
Q. It does have your file number on it?
A. (Witness nods head affirmatively.)
Q. And that is 74.18?
A. Yes.
Q. And that is one of your file numbers.
I am now showing you a document marked for identification as Commission's Exhibit 562-14-H and 14-I, and ask you to state whether you recognize anything on it, or can recollect having seen it, or anything about it.
A. I can't recall the text of the telegram. It has
9273 our charge on the bottom, and I think this is my writing (indicating).
Q. The words "file copy" are in your handwriting?
A. Yes, that is in my writing.
Q. I now show you a document identified as Commission's Exhibit 562-12-X, and ask you to state whether you have any recollection or knowledge of that, or whether you know aanything about it?
A. I don't recall.
Q. Is there any file designations of your company on it?
A. No, sir.
Q. I now show you documents, Commission's Exhibits 562-12-I, 12-J, and 12-K, and ask you to state what you know about those, and I ask you that 12-L, 12-M, and 12-N.
A. I don't recall this at all. As I said before, it has the Riverside charge on it, and that is the only thing I can identify.
Q. You do not have any independent and personal recollection at this time?
A. No.
Q. Of having handled that telegraphic correspondence for Mr. Treanor?
A. No, sir; I do not.
Q. Do your file numbers 74.18, and any handwriting that you can recognize, appear on any part of that
9274 exchange of correspondence?

A. "74.18" is here.

Q. What about the handwriting "By airmail"?

A. I don't think that is my writing.

Q. But you do recognize the "74.18" as your file number, a designation?

A. Well, I would say it sounds like some of our file numbers. I don't know. I don't do the filing.

Q. Is that a file symbol that you use in your office?

A. Yes, we do have that symbol. We use the point system.

Q. I now show you documents identified as Commission's Exhibits 553-MM, and 562-16-F, and 562-16-J, and ask you to state if you can recall anything concerning that exchange of telegraphic correspondence?

Mr. Leisure: I wonder if we can save time by giving the witness the group of exhibits and letting her took at them and see which ones she can identify, and then one question will cover the whole thing?

Examiner Norwood: I was thinking of that.

Mr. Leisure: I think it will save time.

Examiner Norwood: I think you will do that now.

The Witness: I don't recall the text of any of these telegrams. They are in the same class as the others. It has our charge on the bottom.

By Mr. MacIntyre:

9275 Q. Do you recall having handled it for Mr. Treanor, certain telegraphic correspondence with Mr. Blane Smith, and others in the East in the cement industry concerning Mr. Samuel Trailor and his efforts to acquire or construct a cement mill in or around Los Angeles?

A. No, I don't believe I do.

Q. You don't recall any of those personal efforts of Mr. Treanor in his correspondence?

A. I don't recall this specifically.

Q. I am handing you several papers here, which have been identified and accepted as Commission's exhibits in this case, Miss Scott. I ask you to glance at them and specify the numbers of the exhibits on any in that group that you can on which you can find any identifying marks or signatures which you recognize. For example, 570-15-T, do you recognize the signature there as the signature of Mr. Treanor, or placed on there by someone in his office?

A. The signature says "John Treanor," but I don't recognize the writing.

Q. You don't recognize the writing of the person who signed under the name "John Treanor" and the initials "H. M."?

A. No.

Q. Do you have anyone in your office who has those initials?

A. Not at the present time.

9276 Q. Did you at that time, which was September 15, 1934?

A. I think we had a girl doing relief work whose name was Martha. I don't remember her first name.

Q. Would she have had authority?—

A. I believe she did my work while I was away.

Q. —to handle correspondence in the manner in which this was handled here?

A. If she was working with Mr. Treanor, she would.

Q. In handling correspondence in your absence?

A. Yes.

(Indicating) This is evidently the writing of the telegraph company. They must have telephoned me. There is my telephone number.

Examiner Norwood: Speak louder.

The Witness: I say, that is my telephone number, so they probably telephoned it to me.

By Mr. MacIntyre:

Q. On Exhibit 562-12-H, or the photostat of it, there appears your telephone number?

A. Yes, sir.

Q. Would you please read it?

A. Whitney 0662.

Q. And Mr. Treanor's telephone number?

A. Whitney 5325.

Q. That is also on it?

9277 A. Yes, sir.

Q. 562-12-C, 12-D, have your file number 74.18 on it?

A. Yes, sir. I should say that I might have written this letter. "Via air mail" is my writing.

Q. 562-11-J and 11-K carries the words "via airmail" in your writing, and your file symbol?

A. Yes, sir.

562-15-B, the same. I don't recall the text.

Q. 562-15-B, while not recalling the text, you do recognize your file symbol on it?

A. Yes.

I don't recall this one.

Q. As to 562-9-T and 9-U, do you recall or recognize the handwriting "TVA"?

A. No.

Q. You don't recall having put that on there at the time it was filed in your office?

A. That is not my handwriting.

Q. Do you recall whether it is the handwriting of Mr. Treanor?

A. I don't recall.

I don't recall this (referring to document).

Q. You do not personally recall 562-9-V, 9-W, and 9-X, which appears to be a letter to Mr. Blaine Smith from Mr. Mr. Treanor, but do you recall having handled for
9278 Mr. Treanor correspondence which he had with Mr. Blaine Smith at that time concerning TVA?

A. I have written letters to Mr. Smith, but I don't know—

Q. Concerning TVA, from Mr. Treanor?

A. Probably, but I don't recall specific ones.

Q. Don't you recall having written several letters from Mr. Treanor to Mr. Smith concerning Tennessee Valley Authority, and having received from Mr. Blaine Smith letters on the same subject?

A. No.

Q. You don't recall the correspondence Mr. Treanor had with Mr. Smith on that?

A. Not specifically.

Q. Well, generally?

A. No, I don't.

Q. Do you recall the exchange of correspondence between Mr. John Treanor and Mr. Bernard Kilgore of the Wall Street Journal?

A. This has my initials on it and I would say I probably wrote it.

Q. That is 553-ZZ to EEE, inclusive, being a six-page letter from Mr. Treanor to Mr. Bernard Kilgore, March 5, 1934?

A. Yes.

This is Mr. Treanor's signature, on that letter.

Q. 553-YY?

9279 A. Yes, sir.

Q. And also your initials along with his initials?

A. Yes, sir.

I don't recognize that (indicating).

Q. You don't recognize your file symbols on 553-XX?

A. I don't.

This is Mr. Treanor's signature, also his initials and mine.

Q. As they appear on 553-GGG?

A. Yes, sir.

This appears to be a copy. It has no signature, but there are Mr. Treanor's signature, and also mine.

Q. Does it appear to be a copy from your files?

A. Yes.

Q. No. 571-A to 571-D, inclusive?

A. Yes.

Q. A four-page letter from Mr. Treanor to Bernard Kilgore, dated April 4, 1934?

A. Yes.

Q. Do you recall whether or not copies were sent to Mr. Blaine Smith and Mr. Mehren and Mr. B. F. Afleck, as indicated there?

A. I don't recall, but I would assume so.

Q. Just below your initials it does carry the designations of those men, that copies did go to those persons?

9280 A. Yes.

Q. Do you personally recall 553-LLL?

A. No, sir; I don't recall this letter.

Q. You don't recall 937-WW and XX?

A. No, sir; I don't recall the text of the letter, but it is on our second sheet. There are Mr. Beckett's initials and also mine.

Q. 562-10-Q and 10-R, you are referring to?

A. Yes, sir.

Q. Carries your initials and Mr. Beckett's?

A. Yes, sir.

Q. In whose handwriting are the words "Int. Co.," company, above the words "D. S. McBride, 342 Madison Avenue, New York"?

A. I don't recognize that.

Q. But it appears on the paper that would indicate to your mind that it was handled in your office as correspondence between your office and Mr. McBride?

A. Yes, sir.

I don't recall this one (indicating).

Q. 578-6-R and 6-S, you don't recall that as a letter that Mr. Treanor received from Blaine Smith?

A. No, sir. I don't recall that.

I don't recall this one 578-6-T.

Q. You don't recall 578-6-T as a letter that Mr. Treanor received from Joseph Young of the Lehigh Company, in 1934?

9281 A. No, sir.

This 870-15-B has Mr. Treanor's signature on it, and his initials and mine which would indicate it came from our office.

As to 870-15-E, I wouldn't want to say. It has Mr. Treanor's initials and mine.

Q. You don't have any independent recollection of it as a letter from Mr. Treanor which you typed for him to Col. William J. Donovan in 1934?

A. No. I don't recall the text, but this is stamped—

Q. In other words, on 938-AA, the stamp in the upper right-hand corner is the stamp you placed on it, or is placed on it in your office? Does that appear to be one that you placed on there, or was placed on there?

A. Yes.

I don't recall that, at all.

Q. You don't recognize 433 as one that you have seen before?

A. No.

I don't recognize this.

Q. You don't recognize 916-G as one that you have seen before?

A. No, sir.

Nor 916-H.

Nor 916-I.

Mr. Wooden: Your Honor, it begins to be ap-

9282 parent that we are not going to keep to our hope of finishing by 1 o'clock. I infer that Counsel has considered stipulating that these papers are what they purport to be, produced from the Riverside in response to a subpoena.

Mr. Leisure: That was not the case at all. There were certain segregations that had to be made, and it seemed quicker this way. I didn't refuse to stipulate.

A. 958-L has Mr. Treanor's signature on it, which I recognize. I didn't write the letter.

By Mr. MacIntyre:

Q. But you recognize his signature on that, though.

A. Yes.

Examiner Norwood: The same as to that?

The Witness: The same as to 971-C. It has his signature on it. It doesn't look too much like his signature. I won't testify as to that.

By Mr. MacIntyre:

Q. That is, 953-N.

A. Yes, sir.

Q. His initials down on the lower righthand corner.

A. Yes. "J. T."

That is Mr. Treanor's signature, also.

9283 Q. In other words, it is also his signature on 958-U?

A. Yes, sir.

I don't recognize that as his signature.

Q. That was written October 6, 1934. Was that during the period that this substitute of yours by the name of Mrs. Martha was there in September and October, 1934?

A. It might have been. The letter was not written in our office.

Those are Mr. Treanor's initials, and also mine.

Q. 953-P.

A. I don't recall the letters, however.

958-X, I don't recall that. These are his initials and mine.

Q. Your initials and Mr. Treanor's appear on there, as was customary on letters you typed for him?

A. Yes.

Mr. Treanor's and my initials.

Q. On 958-Y, as was customary for you to place them on letters you wrote for him?

A. Yes, sir.

I don't recall this one.

Q. 971-28-F and 28-G. You don't recall having seen that one before.

What about the handwriting in the upper righthand corner of the first page?

9284 A. I don't recognize that.

Examiner Norwood: If you don't recognize them, just hand them over.

A. This is Mr. Treanor's signature; his initials and mine.

9285 Q. That is Mr. Treanor's signature on 971-I?

A. Yes, sir.

571-A appears to be written on our file copy stationery; it has Mr. Treanor's signature and also mine.

Q. And it is customary for you in the writing of letters for him to do that.

What about your file No. "24.4113"?

A. No.

This is Mr. Treanor's signature. It is on the Riverside stationery.

Q. That is Mr. Treanor's signature on 953-W?

A. Yes, sir.

I don't recall this one (indicating).

Q. Are those your initials which appear on this file copy of a letter?

A. Yes.

Q. To Honorable Harold Stevens, October 16, 1934?

A. Those are my initials.

Q. 956-2T?

A. Yes, sir.

This is Mr. Treanor's signature and my initials and it is on the Riverside stationery.

Q. That is 953-3-I and 3-J?

A. Yes, sir.

9286 This is 953-3G and 3H signed by Mr. Treanor and written on the Riverside stationery.

953-3R is on the Riverside stationery and signed by me for Mr. Treanor.

Q. Signed by you for Mr. Treanor?

A. Yes, sir.

Q. That is 953-3R.

He frequently had his secretary sign letters, whether you or someone substituting for you to sign his signature in that manner; did he not?

A. Yes, sir, if he left the office before it was written.

958-2Q and 2R, I don't recall.

571-3A, 3B, I don't recall.

I think that is Mr. Treanor's writing. It looks like it (indicating).

Q. In other words, the writing "forward the material" at the bottom of the page marked as 562-3R appears to be in Mr. Treanor's writing, as you recognize it?

A. Yes, sir.

This letter is signed by Mr. Treanor and written on our stationery (indicating).

Q. That is 971-5U?

A. Is that "U"?

Q. 5W.

A. "W".

9287 Q. Mr. Treanor's signature?

A. Yes, sir.

This is not signed. Those are Mr. Treanor's initials, also mine.

Q. And yours?

A. Yes, sir.

Q. Appearing on—

A. 971-5X.

Q. 971-5X.

A. (Indicating) I don't remember receiving this, but I think that is my handwriting.

Q. That is your handwriting, the words "Dr. Burns" in the upper righthand corner on 971-31Q?

A. Yes.

(Indicating) 913-4H—

Q. 4H, yes; that is 4K, 4H, is that right?

A. Well, this letter also carries Mr. Treanor's initials and mine.

Q. What about the file stamp in the upper righthand corner?

A. The file stamp in the corner is for Mr. Young's attention and was written by me.

Q. That is in your handwriting?

A. Yes, sir.

This was signed by Mr. Treanor on Riverside stationery, 971-22X.

9288 Q. His signature appearing on the letter, 971-22X?

A. Yes, sir.

This letter carries Mr. Treanor's initials and mine (indicating).

Q. 971-22Y?

A. Yes, sir.

Q. A letter from Mr. Treanor to Dr. J. M. Clark?

9289 A. Yes.

571-LL, M, and N, I can't recall.

Q. You don't recall?

A. No.

I don't recall this letter, but I think that is Mr. Treanor's writing.

Q. That is 571-OO, you do recall Mr. Treanor's handwriting in the lower lefthand corner, the words "Mr. Beckett"?

A. Not "Mr. Beckett," just "Beckett."

Q. The word "Beckett"?

A. Yes, sir.

Q. And as being in the handwriting of Mr. Treanor?

A. Yes, sir.

This letter has my initials and Mr. Treanor's, and I think this is my writing in the stamp.

Q. Your writing in the upper righthand corner of 958-TTTT; that is, in connection with the file stamp?

A. Yes, sir.

Q. And your initials and Mr. Treanor's appearing at the end of the letter on 958-UUU?

A. Yes, sir.

913-SSS, that is Mr. Treanor's signature, and those are my initials, and that is our stationery. I don't recall any of the text.

Q. The attached memorandum to that letter you don't recall, but you do recognize Mr. Treanor's signature on 913-SSS?

9290

A. Yes, sir.

Q. Now, Miss Scott, I am showing you Commission's Exhibit 571-S, and ask you to state what you know about that, and whether you recall having discussed that particular document with Mr. George D. Casto, a Commission representative, on one of his recent visits to your office?

Mr. Works: May I see that, Miss Scott?

(The exhibit was handed to Mr. Works, who, after having examined it, handed it back to the witness.)

A. Well, the letter is written on our file copy stationery; that is, it appears to be, 571-S. It has my initials at the end.

Q. In whose handwriting are the words "Mr. Treanor"?

A. And that is my writing.

Q. That is in your handwriting?

A. Yes, sir. But I don't recall discussing the letter with Mr. Casto or with anyone.

Q. Don't you recall having stated to Mr. Casto that you

did recall this as a file copy of a letter that you wrote and mailed for Mr. Treanor, and that you sent copies to the persons whose names appear at the bottom of the second sheet?

A. No, sir; I don't recall discussing it with Mr. Casto at all.

9291 Q. Do you recall the typing of that letter to Mr. Rader, and the sending of copies of it to the others on this date at Mr. Treanor's instructions?

A. I don't recall typing it. I would say from the letter that I did type it because it has my initials on it, and Mr. Treanor's, and it has my handwriting, but I don't recall the letter.

Q. That is your handwriting, the words "Mr. Treanor" at the end of the carbon copy to him?

A. Yes, sir.

Mr. MacIntyre: That is all.

Mr. Leisure: No cross.

D. P. NICKLIN was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

9292 Mr. Works: If the Examiner please, there is one matter with regard to linking up certain exhibits. It will be stipulated by the Respondent, Riverside Cement Company, that the exhibits delivered to the Examiner by mail on or about February 8, 1938, and thereafter marked for identification Exhibits 562 to 571, inclusive, and including subnumbers, or letters, were produced by that Respondent in response to a subpoena issued in this matter and served upon Riverside Cement Company by mail, and included documents from the files, the then files of the Riverside Cement Company.

Does that cover what you have in mind, Mr. MacIntyre?

Mr. MacIntyre: Just about, Mr. Works.

We may ask this question: Did they include any documents that didn't come from the Riverside files?

Mr. Works: As to that, I am unable to say, but my recollection is that there were not.

Mr. MacIntyre: That is, that all documents were
9293 from the Riverside files that were given those numbers?

Mr. Works: That is my understanding, yes.

I am purchasing agent, Department of Water and
9294 Power, Los Angeles. I have been occupying such position since the department was created in 1917. I had been doing the purchasing prior to that for about 5 or 6 years. In the course of my duties I purchase cement.

Q. What is the approximate amount of cement you buy in the course of a year's time?

9295 A. In dollars and cents, the annual contract, which is in intermittent deliveries, averages $80,000. The major construction projects are purchased separately and on individual bids.

By Mr. Wooden:

Q. Can you put the amount in terms of barrels?

A. Forty thousand barrels.

Q. A year?

A. On the annual—as we term, an annual contract.

Q. Do you buy on invitation and sealed bids?

A. All cement quotations are on sealed bids in response to invitations.

Q. What is your object in buying on sealed bids?

A. The city charter requires purchases in excess of $2,000 be sealed,—the bids be sealed.

9298 Q. Do you have with you the bids on cement and the abstracts made in your office of those bids covering the last several years?

A. I have; yes, sir.

Q. How many years?

A. 1934 to my 1938 contract.

Q. Will you tell us, by referring to your records, what the bidding was in the last—the latest year that you have there, including the amount, the manufacturers who bid, and the price or prices bid?

A. Yes.

Q. Will you do that for the last year, which is what year?

A. I haven't the contract for 1938 here.

On our annual contract, divided into zones, those zones were established. I am not sure whether established by our department or by our department in collaboration with the cement manufacturer.

Q. You are not sure about that?

A. No. We always collaborate with the industries so that our requests for bids do not vary from their standard price.

Q. All right. What were the prices that were bid?

9299 Mr. Works: When?

Mr. Wooden: For 1938.

A. Bid received January 11, 1938—

Mr. Leisure: Could we have the records, there, Your Honor? I see the witness has them and they are the best evidence.

The Witness: These are the official records of the department.

Mr. Works: That is unfortunate, but they are being used as evidence against us and they are the best evidence, if the Examiner please.

By Mr. Wooden:

Q. Do you have here the 1938 abstract?

A. Yes.

Q. Is this it?

A. Yes.

9300 Q. What is the paper I show you, marked "Commission's Exhibit 1300-A and B," for identification?

A. A tabulation of proposals received in response to our request number—

Examiner Norwood: A little louder.

A. (Continuing) A tabulation of the prices quoted in the proposals received in response to our request No. 2483, received January 11, 1938.

Mr. Wooden: Your Honor, I will offer that paper.

Mr. Leisure: What year was that, please?

Mr. Wooden: '38.

I will offer that paper in evidence with the understanding that a photostatic copy may be substituted and the original returned to the witness. And I will proffer for the checking of Counsel who may be interested the original bids which, as I understand the witness, underly the abstract from which that abstract was made.

The Witness: Yes, sir.

By Mr. Wooden:

Q. There are how many bids there and from what companies?

A. Thirteen bids, Monolith Portland Cement Com-

9301 pany, Blue Diamond Corporation, Ltd., Western Velo & Cement Specialties Company—

Mr. Leisure: Mr. Wooden, there has been an exhibit offered, hasn't there? We just wanted to look at it a second.

Examiner Norwood: Yes, you had better stop there.

Mr. Wooden: This is just a part of that. These were the bids that underly that.

Mr. Works: Why don't you offer them all at once, and we can look at them all at once and examine them together?

Examiner Norwood: Yes, do that.

Mr. Wooden: Your Honor, I do not care to put in evidence the original bids, themselves.

Mr. Works: That is all right, Mr. Wooden.

Mr. Wooden: But merely—

Mr. Works: Just let us see them.

Mr. Wooden: —merely to have them available for checking by Counsel.

Mr. Works: That is all right.

(There was a short pause in the proceedings.)

Mr. Leisure: May I ask the witness a question about the abstract?

Examiner Norwood: Certainly.

Mr. Leisure: Have you made this abstract up from
9302 the original records, themselves?

The Witness: The abstract is taken at the reading of the bids.

Examiner Norwood: It is taken from the bids, isn't it?

The Witness: No, it is taken from the reading.

Examiner Norwood: The reading is from the bids, isn't it?

The Witness: Yes.

Mr. Leisure: Well, Your Honor, Mr. Wooden and I have a stipulation, I believe, covering this abstract; that where one party offers an abstract and has, himself, compiled it from original records, that we do not object to it. I think this comes under that; that is, as to identification.

We object to this general testimony because it is intrastate.

Examiner Norwood: Yes, that is understood.

Mr. Leisure: We object to it on that ground. I think it does come under this stipulation.

Mr. Works: We don't question that. We have no further objection.

9303 (COM. EX. 1300-A and 1300-B was offered and received in evidence.)

By Mr. Wooden:

Q. Will you state, Mr. Nicklin, what the respective manufacturers of cement bid on that invitation?

A. On an item of 300 sacks—

Mr. Leisure: The document speaks for itself. The witness can't add to it by reading it into the record.

Examiner Norwood: Well, if Counsel wants to bring out some explanation of some high points with regard to that, he may put it in the record to serve, as heretofore stated, as a glorified index to direct our attention to this particular paper. I think that might help.

Mr. Leisure: I think that would be mere argument.

Mr. Works: That is shown on the exhibit, itself.

Mr. Davis: There is one other objection: The exhibit which the witness has does not disclose the destinations for which the bids were filed. It states it
9304 zones but it does not show where the zones were so that it would be shown whether it was the list prices for those destinations or not.

Examiner Norwood: This witness could tell us about that.

Mr. Davis: He hasn't done it yet.

Mr. Wooden: He said something about zones. They are delivered within certain zones.

By Mr. Wooden:

Q. Is that the way the bids are?

A. Yes. I don't think I have them.

Q. You don't know what the boundaries or the area covered by the various zones is?

A. Those zones start with our northern territory, including Mono Basin and extend to Wilmington and San Pedro.

Q. You don't know, as I understand it, whether they are zones that you worked out, yourself, or whether they are zones which the manufacturers, themselves, had?

A. They were not had from the manufacturer. We had to make them to take care of our territory.

Q. Special zones of your own creation?

A. I think the zones were divided in accordance with the practices of the cement manufacturer.

Q. You mean with reference to zone areas of the manufacturers?

9305 A. Yes.

Q. In other words, your zones, then, corresponded to the manufacturers' zones, is that what you understand?

A. Yes.

Q. Do you have the abstract for the year preceding 1938?

A. I have.

(Witness refers to documents.)

A. Bids were obtained in December, 1936.

Q. Do you have the abstract of those?

A. I have.

Q. May I see them?

(Documents were handed to Counsel by the witness.)

(The documents referred to were thereupon marked for identification as Commission's Exhibits 1301-A and 1301-B.)

By Mr. Wooden:

Q. The paper you have just handed me, marked as 1301-A and B, for identification, do you have the bids that underly that abstract you have handed me?

A. I have.

Q. Will you submit them for checking?

(Paperwritings were handed to Mr. Wooden by the witnee.)

Mr. Wooden: I offer 1301-A and B, and I prof-
9306 f . the bids to Counsel for checking purposes.

(COM. EX. 1301-A and 1301-B was offered and received in evidence.)

Q. What is the paper I show you, marked 1302, for identification?

A. That is a zone map.

Q. Is that a map of the zones that you have been referring to?

9307 A. In our specifications.

Q. I know, but is that the one you have been referring to in your testimony?

A. I have, yes.

Q. Is that submitted with the bids?

A. Yes.

Q. Does it apply to the two abstracts which you have just identified?

A. That map, the use of it, is of quite recent date. I can't remember the bids asked for in '36, whether it was on the zones or on railroad stations.

Q. It applies wherever zones are used?

A. Yes.
Q. In your invitations?
A. Yes, sir.
Mr. Wooden: All right. I will offer 1302.
Mr. Leisure: We have no objection.
(COM. EX. 1302 was offered and received in evidence.)
Q. Do you have an abstract for 1935, August, 1935?
A. Yes, covering approximately 200,000 barrels of cement to be used at our Mono Basin tunnel. The prices
9308 were asked f. o. b. bidders' mill.
Q. You got them that way on that occasion, did you?
A. Yes, sir.
Q. Did you find the prices different f. o. b. mill?
A. Two prices were alike, the balance different.
Q. Ordinarily, you buy delivered; is that right?
A. Only on regular places where we use all the time and intermittently.
Q. How many times in the last several years have you bought and been able to buy f. o. b. mill?
A. Twice.
Mr. Davis: Just a moment. Objected to as a compound question, when he bought and when he was able to buy.
Examiner Norwood: I think that question all right. The objection is overruled.

By Mr. Wooden:

Q. And is this August, 1935, instance, one of them?
A. That is one of them; yes, sir.
Q. And how far back was the other one?
Mr. Leisure: Mr. Nicklin, you are standing very close to Mr. Wooden, and we want to hear you; if you will just try to keep your voice up, please.
The Witness: Pardon me.
9309 A. The other one was purchased f. o. b. Victorville. The fact that we bought it from the Southwestern Portland Cement Company made me state that twice I have purchased f. o. b. mill.
Q. Well, you mean you are mistaken about the Victorville purchase being f. o. b. mill, or what?
A. No, I purchased it f. o. b. Victorville.
Q. I see. From the Southwestern?
A. Yes, sir. Others quoted f. o. b. Victorville.
Q. Other mills quoted f. o. b. Victorville?
A Victorville.

Q. Is the paper marked 1303-A and B the abstract of the bids in August, 1935, on which you say you got f. o. b. mill quotations?

A. It is; yes, sir.

Mr. Wooden: I will offer that for the record and proffer for checking purposes the original bids accompanying it.

(Counsel examine documents.)

Mr. Leisure: Your Honor, as to the abstract that 9310 has now been offered, under Roman No. III, grade No. 3 cement, it will be necessary to have the specifications No. 1752 in order to complete that and tell what that cement is, grade No. 3.

Do you have any objection to having that go in, Mr. Wooden?

Mr. Wooden: Do you have it here?

Mr. Leisure: Yes.

Mr. Wooden: No, no objection.

Mr. Leisure: We will have it marked, then, and offered with that exhibit.

Mr. Wooden: Your Honor, the two pages of specifications out of the California Portland Cement Company bid have been marked 1303-C and D, and I am offering them along with the abstract.

Examiner Norwood: Yes.

Mr. Works: They may be treated as specimens, as far as the other bidders are concerned, I take it. I assume they are identical.

By Mr. Wooden:

Q. Is that correct, Mr. Nicklin?

A. Are they a part of my specification?

9311 Q. Yes.

A. Yes.

(COM. EX. 1303-A, 1303-B, 1303-C, and 1303-D, was offered and received in evidence.)

Cross-Examination by Mr. Leisure.

Q. Mr. Nicklin, are these documents original bids received by your department for cement; the ones that have been presented here?

A. Yes, they are.

Q. Now, as to each lettering, are there included here all of the bids that were submitted?

A. Yes.

Q. Now, in each case did your department issue an invitation for bids?

A. We did, yes.

9312 Q. And the invitation is with the bids which we have been examining?

A. One sheet is the invitation published.

Q. Do these invitationos call for bids to furnish your department with cement as it will require over a short period of time?

A. With the exception of one for Mono basin, they do; yes, sir.

9318 *Redirect Examination by Mr. Wooden.*

Q. Mr. Nicklin, the PWA bidding, is that bid on, or was it bid on by the manufacturers or by dealers, also?

A. I just cannot remember. I could get the information and give it to you.

Mr. Leisure: Do you take the bids? Excuse me.

The Witness: They are received in my office; yes, sir.

9319 E. E. DUQUE, being called as a witness for the Commission and, being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

I am Vice President and General Manager of the California Portland Cement Company, whose mill is lo-
9320 cated at Colton, California. I have been Vice President and General Manager since about 1927. My company is a member of The Cement Institute and also The Pacific Coast Institute. I was a Trustee for the Eleventh District of The Cement Institute. I believe I was elected sometime in 1935. It was following the period which Mr. Treanor served in that same capacity for this District.

Q. As a trustee for the eleventh district do you carry on communications with the members in the eleventh district?

A. Occasionally, yes.

Q. Do you have meetings of your Eleventh District members from time to time?

A. We have had meetings. I don't remember ex-
9321 actly how many or at what time.

Q. Do you have them in any regular intervals?

A. No.

Q. Do you remember when the last one was?

A. I think probably there was a meeting held in the fall of 1937.

Q. Can you say what the occasion for that meeting was?

A. There was to be a meeting held of the Institute, I believe, in New York, and as I remember I called a meeting to ask if there was anything that they wanted me to take up as a trustee for this district before the trustees' meeting in New York.

Q. What is the selling territory of your mill at Colton?

A. Southern California, Western Arizona, and Southern Nevada.

Q. Do you have the same freight from your mill into Arizona as the Victorville mill?

A. Into Western Arizona?

Q. Well, specify any parts of it you like.

A. My recollection is that the rates from Colton,—that is, our mill,—to points in Western Arizona, commercial rates, are the same as they are from Victorville.

9322 Q. How about eastern Arizona; where do you draw the line between the two?

A. As regards what?

Q. Commercial business.

A. With reference to what mills?

Q. Victorville and your mill.

A. I believe the rates run the same to the same points from the Victorville mill and the Colton mill. That is my recollection. I am not certain as to that.

Q. You mean all through the State of Arizona?

A. No, I wouldn't say all through the state.

Q. To what points?

A. I think they are the same to Phoenix.

Q. Is that on the Santa Fe?

A. On the Southern Pacific, as I recall.

Q. How about the rates on the Santa Fe?

A. I think they are the same through the State of Arizona.

Q. From your mill and the Victorville mill, both?

A. I think that is correct.

Q. You mean, of course, the freight is different at different destinations but the same for both mills?

A. I believe that is so.

Q. At any particular point?

A. I don't know whether the rate is the same for
9323 all points on the Santa Fe in Arizona from the two lines or not, but at any rate I think the rates are the same to the different destinations from the two mills.

Q. What has been the policy of your company with regard to selling at delivered price?

A. It has been the policy of our company and is the policy of our company to sell delivered prices or at mill price.

Q. In what cases do you do one and in what cases do you do the other?

A. As I recall we do in every case what we are asked to do by the party calling for the bid.

Q. Generally speaking, don't you sell all your commercial trade at delivered prices?

A. Yes, commercial trade, generally.

Q. Do you put out delivered price lists?

A. No.

Q. Pardon me?

A. We do not put out price lists.

Q. At any time?

A. We do not put out any price lists except for use in our own sales department. That is, we have not done that since the Code.

Q. It has been the practice of your company has it not, to make your delivered prices the same as the delivered prices of your competitors?

9324 A. Our practice has been to meet competition at destination.

Q. By meeting competition at destination do you mean making the destination price the same as that of your competition at that point?

A That is what we attempt to do.

Q. Have you followed the delivered price lists of competitors who have put out published lists?

A. At times, yes.

Q. What competitors have put out published price lists?

A. As I recall, the Riverside Cement Company, Southwestern Portland Cement Company, and, I am not sure as to the Monolith Portland Cement Company.

Q. Has it been your practice to follow the published delivered prices in submitting sealed bids?

A. I would like to have the question read, please.

(Question read.)

A. Yes and no.

Q. Explain your answer.

A. Sometimes we do and sometimes we don't.

Q. Can you say what your general policy has been?

A. Our general policy is to meet competition.

Q. By that you mean making your destination price the same as the destination price of your competitors?

A. We try to figure out what the price of that competition will be, yes, and we attempt to meet it.

9325 Q. You don't attempt to go either above or below it?

A. We have, at times, gone below it.

Q. You have at times gone above it?

A. We have at times gone above it.

Q. But generally you aim to make it the same?

A. To the best of my judgment and knowledge of the business we attempt to make it the same.

9326 Q. I am showing you a letter purporting to bear your signature, addressed to the Federal Trade Commission, June 26, 1931. Is it your signature?

A. That is not my signature.

Q. Someone who has authority to sign for you?

A. Someone who has authority to sign for me, but I don't know whether he had authority to sign in this case. I have not read the contents.

Q. W. C. Strother,—who is he?

A. W. C. Strother was our auditor.

Q. He had authority to sign for you in that case?

A. I would say he did, yes.

Q. Does there accompany the letter a statement of several pages concerning the business affairs and policy of your company?

A. This seems to be a statement of some of the practices of our company at that time.

Q. Does it contain a statement regarding the policy of your company with regard to following published price lists?

A. Yes.

9327 Mr. Wooden: Your Honor, this information was submitted in a letter of June 26, 1931 by the witness' company and contains this statement:

"One or more of our competitors publish a public price list. It has been our practice, particularly on sealed
9328 bids, to follow this published price list. This company has in most cases bid the same price as the published price list. A portion of our sealed bid business is to political subdivisions. It has been our practice in most instances on this class of work to bid at dealer's cost as shown on the published price list of our competitor.

"As to our method of determining the delivered price of cement when we are meeting other competition (excepting sealed bids) on direct quotations, we quote the same price as the published price list of our competitors, but when we find that a competitor is offering to sell cement at a price less than the published price list, we then, in most instances, quote a price equal to or less than the price offered by our competitor."

Mr. Leisure: I understand we have the same objections to that that we have had in other instances where this material has been offered. The fact that it is now read rather than being offered as an exhibit is not—

Examiner Norwood: This is just read as a statement of Counsel here. I don't understand it to be in evidence.

Mr. Wooden: No, it is read from a communication of the witness' company.

9329 Examiner Norwood: Have you proven that is a communication?

Mr. Wooden: I thought so.

Examiner Norwood: And the Respondents do not object to reading it?

Mr. Wooden: That is my understanding.

Examiner Norwood: Instead of introducing it?

Mr. Leisure: The same objection as if it had been offered as an exhibit, however; incompetent, irrelevant, and immaterial. We already have our objections upon it.

Examiner Norwood: I was just confused about the status.

The objection is overruled and the matter is received in evidence.

9330 Q. Mr. Duque, are the papers marked 1304-A to J, 1305-A to U, 1306-A to V, 1307-A to S, 1308-A to Q, and 1309-A to L, 1310-A to Q, 1311-A to G, 1312-A to Q,

price lists of your company that you said are not published but used merely for the information of your own staff?

A. Well, now, Mr. Wooden, if these are the papers which you requested our attorney, Mr. Davis, to furnish to you—

By Mr. Wooden:

Q. Yes.

A. —in connection with this matter, I would say that they are, in subject to the check of these papers by our attorney, Mr. Davis.

Q. All right. Do I understand that these represent the prices that were—at which your company sold com-
9331 mercial business in the area and at the destinations to which they relate?

A. Well, I would say that they are probably the price lists that we used in the office to sell cement at, but whether we sold it at those prices or not, I couldn't say.

Q. And it is your general practice to adhere to the price lists that you worked up?

A. It was, except when we found that that price wasn't the price that was being quoted, then we met competition.

Q. In referring to 1304-A, it is marked "Canceled," and some destination prices have been changed in pencil. Were those changes made in your office?

A. I will have to say that I am not familiar with any of the prices, or price changes, in any of the price lists. I coudn't tell you whether they were right or wrong, or what the changes or any of the penciled notations mean on them.

Mr. Wooden: Now, Your Honor, I would like to offer them subject, as I understand it, to the checking of the witness' attorney, and subject, also, to the arrangement that at least some of them are to be returned to the company. As to which ones, I don't know.

Mr. Zimmerman: You mean you will offer them and then withdraw some later?

Mr. Wooden: That is the idea. They may be with-
drawn after some compilations are made from them.
9332 Mr. Zimmerman: I see.

Examiner Norwood: Any objection?

Mr. Leisure: We have no objection to these except those that refer exclusively to intrastate business, and we present our objection to that.

Examiner Norwood: Any objection, Mr. Davis?

Mr. Davis: None except that advanced by Mr. Leisure. As I understand, everyone gets the benefit of Mr. Leisure's objection.

(COM. EX. 1304-A to 1304-J, 1305-A to 1305-U, 1306-A to 1306-V, 1307-A to 1307-T, 1308-A to 1308-Q, 1309-A to 1309-L, 1310-A to 1310-Q, 1311-A-C, E-G, 1312-A to 1312-Q, both inclusive, were offered and received in evidence.)

By Mr. Wooden:

Q. Now, Mr. Duque, showing you a photostat of Exhibit 562-7-K, is that your signature on that paper?

A. No, sir.

Q. Can you say whose it was?

A. It looks like Mr. E. L. Bancroft's signature.

Q. He has authority to sign for you?

A. In certain cases, yes.

9333 Q. And in that case?

A. I would say yes. However, as to these notations on here, Mr. Wooden, I don't know what they mean or who put them on, the pencil notations all through here. I don't know what they are. I can't identify them.

Q. It is an original letter addressed to Mr. Beckett, is it not?

A. Yes.

Q. 562-7-L is the enclosure which was mentioned in the first one?

A. Well, now, that is purely speculation on my part, Mr. Wooden. I did not write this letter. I don't know that this was the enclosure. I can give you my opinion, however, if you care to have it.

Q. All right.

A. This appears to be a letter written by Mr. Guthrie to Mr. Bancroft in reply to a letter written apparently by Mr. Bancroft to Mr. Guthrie on August 11. It would appear to be an answer—it would appear to be the letter referred to in Mr. Bancroft's letter to Mr. Beckett of August 14th. Mr. Guthrie happens to be our traffic attorney.

Q. Do you have a man in your organization by the name of V. B. Bowles?

A. Yes, sir.

What is his position?

9334 A. Auditor.

Q. He sometimes signs letters for you?

A. Yes, sir.

Q. The photostat of 971-22S contains his signature for you, or yours?

A. That is not my signature.

Q. Is it Mr. Bowles'?

A. It doesn't look like it to me. It might be.

Q. Why do you say it might be when you say it looks like it?

A. It doesn't look like his handwriting to me.

Q. He is your auditor, however?

A. Yes.

Q. He was at the time of this writing?

A. Yes, sir.

Cross-Examination by Mr. Leisure.

Q. Mr. Duque, Mr. Wooden asked you if you attempted to meet or try to make your prices the same as your competitors at destination. Do you recall that?

A. Yes.

Q. Do you try to make your price the same as the highest price being quoted at destination, or did you try to make it the same as the lowest price being quoted at destination?

9335 A. Obviously, if we try to meet competition it is to meet the lowest price quoted at destination.

Q. Now, Mr. Duque, did you attempt to ascertain what the market price at a given destination is before you attempt to sell in that market?

A. Yes, sir.

Q. And, having so ascertained, do you then quote your wares at the established market price in that market?

A. Generally speaking, we do.

Redirect Examination by Mr. Wooden.

9337 Q. So when you meet the lowest price you are usually meeting the only price there, is that right?

A. The lowest price usually governs, yes, sir.

Q. Yes, but it is usually the only price?

A. It is usually the governing price.

Q. Is it usually the only price?

A. It is usually the governing price.

Q. You just said it was exceptional when there was any difference in a price at a given destination.

A. That is right.

Q. For the most part, then, you are meeting the only destination price there is at a given place?

A. Mr. Wooden, if there are two prices at one destination to dealers in one community at a certain destination the lower price is the only price that governs and it is given to all the dealers as soon as it is know.

Recross Examination by Mr. Leisure.

Q. The lowest price becomes eventually the established market price, does it not?

A. That is correct.

9338 ROBERT LEE VANCE, being called as a witness on behalf of the Commission and being first duly sworn, testified as follows:

Direct Examination by Mr. Wooden.

9339 My business at the present time is research work.

9340 I have no official position with the Monolith Portland Cement Company and have not been an officer thereof at any time. I have held the office of Vice President of the Monolith Portland Mid-West Company during the period of July, 1929, until the end of July, 1932.

There is no capital relation between Monolith Portland Cement Company and the Monolith Portland Mid-West Company except stock ownership. Monolith Portland Cement Company owns a portion of the stock of Mono-

9341 lith Mid-West and it controls Monolith Mid-West.

The plant of Monolith Mid-West is located at Laramie, Wyoming. I have not had anything to do with the management of the Monolith Portland Cement Company in California.

Q. Did you have a man in the Monolith Portland Mid-West Company organization by the name of L. R. Nelson?

A. We did.

Q. Who was he?

A. He was a salesman.

Q. Was he one of a number of salesmen, or was he—

A. He was one of a number of salesman.

Q. I show you papers marked 1202-H and 1202-G, for identification. Do you recognize that as a letter received by you from Mr. Nelson?

A. I do. I have seen that letter before.

Q. You received that from Mr. Nelson about the time it was written?

A. Yes, sir.

Mr. Wooden: I will offer it in evidence. I might say that it was previously identified as coming from the files of the Monolith Company of California, I believe.

Mr. Leisure: Your Honor, it seems to me that
9342 there should be some showing that Mr. Nelson had authority to bind or authority to speak for the Monolith Portland Mid-West Company before it is received in evidence as even binding on that company.

Certainly it is not binding upon any of the other Respondents. We therefore object to it as incompetent, irrelevant, and immaterial until such foundation has been laid.

Mr. Wooden: It has been shown who Mr. Nelson was, and I think you will find it contains matters on which a salesman might very well have information.

(COM. EX. 1202-G and 1202-H was offered and received in evidence.)

Q. Showing you a paper marked 1202-K, for identification. Did you receive that from Mr. Nelson?

(Witness read document.)

A. I did.

Mr. Wooden: I now offer that in evidence, Your Honor.

Mr. Leisure: I make the same objection, Your Honor, to this exhibit, it being from the same author,
9343 and if Your Honor will look at the exhibit you will see that it is filled with hearsay. The witness would not be allowed to say it if he were on the witness stand, and I submit that it should not be allowed in evidence by a writing if the witness, himself, could not make such statements. The second paragraph starts with "Warner had just returned from Chicago and he says that the powers in the East are inclined to 'do so and so.'" Now, that is purely hearsay, and I object to it.

Mr. Wooden: That is evidently another Respondent.

Examiner Norwood: Off the record.

(There was a discussion off the record.)

Mr. Leisure: It is filled with rumor and hearsay by a salesman. I object to it.

The Witness: That is a report of information that he has picked up in the field as a salesman always reports such information.

(COM. EX. 1202-K was offered and received in evidence.)

Q. Do you have a man in your organization with the initials "S. D. C."?

9344 A. Mr. Clinton was. Now, what is the date on that document?

Q. This is 1929.

A. '29, a part of 1929 Mr. S. D. Clinton was there, yes.

Q. Who was he?

A. He was resident manager of the Mid-West Company at Denver the early part of 1929.

Q. Showing you a paper marked as 1202-C, for identification, have you ever seen that before?

A. I have.

Q. Where and on what occasion?

A. I saw it in Denver in 1930 when I was looking up some other files that came to my notice along the same lines.

Q. Do you recognize it as a photographic copy of a document selected from your files by Mr. Royal?

A. I do.

Q. Do you know any of the handwriting at the top of the paper?

A. I do not, nor do I recognize this notation at the bottom.

Q. Do you recognize the paper as a photographic copy of a file copy of a letter?

A. I have seen such a letter.

Q. In your files?

A. Yes.

Q. And on what occasion was that that you saw it?

9345 A. At the time when something of a like occurrence came up, when I went through the files to see how much of that kind of stuff I could find, and that is when Mr. Nelson left the employ of the company.

Q. Mr. Nelson didn't have anything to do with that matter, did he?

A. Yes, he had to do with it, too. Mr. Clinton was only a figurehead; Mr. Nelson was acting for him, as a matter of fact. He was assuming to act for him.

Mr. Wooden: I will offer 1202-C.

Mr. Leisure: We make the same objection to this exhibit.

Examiner Norwood: The objection is overruled and the exhibit is received as marked.

(COM. EX. 1202-C was offered and received in evidence.)

Q. Mr. Vance, did you bring in any of the price lists of the Monolith Portland Cement Company?

A. Did I?

Y. Yes.

A. Did I bring them here?

Q. Yes.

A. I did not.

9346 Q. All right.

A. I think, Mr. Wooden, we are still looking for them.

Q. Do you know whether or not the Monolith Company of California publishes price lists to the trade?

A. I could not say but I feel certain they did not, but I wouldn't answer, not since the code days.

Cross-Examination by Mr. Leisure.

Q. Mr. Vance, these letters we have just been talking about, did Mr. Nelson have any authority to write these letters?

A. Mr. Nelson had no authority but what was assumed.

Q. Do the letters represent the facts as you knew them at the time, or did he represent gossip and rumor?

A. They represent gossip and rumors.

Mr. Leisure: That is all.

The Witness: They were not taken notice of by the management of the company.